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9:00 a.m.–Noon

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RESERVATIONS: (202) 741–6008

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# Rules and Regulations

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## DEPARTMENT OF ENERGY

## Western Area Power Administration

## 10 CFR Part 905

**RIN 1901–AB24**

## Energy Planning and Management Program; Integrated Resource Planning Rules

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Final rule; notice of decision.

**SUMMARY:** The Western Area Power Administration (Western) is publishing this final rule to adopt revisions to current regulations that require customers to prepare integrated resource plans (IRP). These revisions are the result of a periodic review of IRP regulations. On August 21, 2007, Western published a **Federal Register** notice proposing three changes to its integrated resource planning rules. The first change proposed to eliminate the requirement that a member-based association's (MBA) members unanimously approve the MBA's IRP. Approval would only be required by the MBA's governing body. The second change proposed language to encourage customers to prepare regional IRPs even if a customer is not a member of an MBA. The third change proposed to make customer IRPs more readily available to the public by requiring customers to post their IRPs on a publicly available Web site.

**DATES:** *Effective Date:* These regulations will become effective July 21, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ron Horstman, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213, phone 720–962–7419, fax 720–962–7427, and e-mail *Horstman@wapa.gov.*

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### I. Introduction and Background

Section 114 of the Energy Policy Act of 1992 (EPAct), Public Law 102–486, requires integrated resource planning by Western's customers. Western implemented EPAct through the Energy Planning and Management Program (EPAMP) in October 1995. EPAMP was published in the Code of Federal Regulations at 10 CFR part 905.

Western may periodically initiate a public process pursuant to 10 CFR 905.24 to review the IRP regulations to determine whether they should be revised to reflect changes in technology, needs, or other developments.

A public process to review the IRP regulations was initiated due to recent changes in the electric utility industry. These changes include an increase in the number of competitive resource options utilities must consider, and the diversity and uniqueness of Western's customer needs.

Western published a notice of proposed rulemaking in the **Federal Register** on 72 FR 46570 August 21, 2007. A formal public information and comment forum was held in Denver, Colorado on September 6, 2007. The public comment period extended through November 19, 2007. Ten Western customers submitted written comments. All comments were posted on Western's Web site for public viewing. All comments were reviewed and, where appropriate, incorporated into this final rule. The following section entitled ''Discussion of Comments'' provides Western's responses to all comments. Comments and related responses were consolidated where possible.

### II. Discussion of Comments

#### *A. Overview*

Representatives from the Platte River Power Authority and the Colorado Association of Municipal Utilities provided comments for the record at the public forum. Written comments were received from the following nine entities by the comment deadline of November 19, 2007: Colorado River Energy Distributors Association (CREDA), Delta-Montrose Electric Association (Delta-Montrose), Irrigation & Electrical Districts Association of Arizona (IEDA), Kansas Electric Power Cooperative (KEPCo), Platte River Power Authority (Platte River), Salt River Project (SRP), Tri-State Generation and Transmission Association (Tri-State), Utah Associated Municipal Power Systems (UAMPS), and the Utah Municipal Power Agency (UMPA). In addition, a comment letter was received from the Arizona Municipal Power Users' Association (AMPUA) after the end of the comment period. Western considered all the written comments referenced above.

All of these comment letters, and a transcript of the public meeting, can be found at: *http://www.wapa.gov/es/irp/irpchanges.htm.*

#### *B. Approval of an MBA IRP*

Western proposed to eliminate the requirement that members of an MBA unanimously approve the MBA's IRP given the large number of members of some MBAs and the diversity of the members' interests. Instead, Western proposed to require approval only by the governing body of an MBA, which serves the interests of each MBA member through representation on the MBA board.

*Comment:* The majority of the comments received supported Western's proposed change to the regulation. Platte River's comment letter in particular describes why additional approval by each member is inconsistent with Platte River's fundamental decision-making process. Tri-State commented that approval of an IRP by each MBA member was a

duplicative process that was unnecessary and unwarranted.

Delta-Montrose opposed the proposed change, claiming that it would lose its voice in the IRP development and approval process if individual MBA members were denied the opportunity to approve the IRP. Delta-Montrose contends that the proposed change would result in the ''averaging'' of its MBA's governors and deny it the opportunity to promote issues that it believes are important.

*Response:* Western appreciates the support of Platte River, Tri-State, and others and understands the concerns raised by Delta-Montrose. Western notes that anyone, including an MBA member, can voice its opinion on an MBA's IRP through the MBA's public participation process, which is still required under Western's regulations. Moreover, an MBA member's representative on the MBA's Board of Directors can actively participate in board discussions of the IRP. 10 CFR part 905.12(b)(2) states that an IRP submitted by an MBA must specify the participation level of individual members and also allows any member of an MBA to submit an individual IRP instead of being included in an MBA IRP. Accordingly, Western will adopt the proposed change to its regulation.

*C. Regional IRPs*

Western proposed to add a paragraph to its IRP regulations to encourage cooperation among customers in the preparation of regional IRPs, with advance approval by Western, even if the participating customers are not members of an MBA. Western stated in the proposed rule that collaboration on transmission projects through a regional planning approach is particularly appropriate.

*Comment:* Comments generally supported regional IRPs as long as this compliance approach is optional and not mandatory. CREDA asked that any proposed language on this issue be very explicit, with Western's customers being given an opportunity to review and comment on the language before it is adopted. Tri-State supported this initiative and asked Western to clarify that this proposal is focused on collaborative regional transmission planning.

*Response:* Western appreciates the commentators' general support of this proposal. Western will adopt the proposed change by modifying existing cooperative IRP regulations to clarify that regional IRPs, though voluntary, are encouraged and that participants need not be members of an MBA or a Western customer. Rather than adding explicit language which could impede joint planning in ways that cannot be readily foreseen or predicted, Western will draft relatively broad language that will permit non-MBA members, with Western's advance approval, to work cooperatively in preparing regional IRPs.

*D. Public Availability of IRPs*

Consistent with the requirement for full public participation in the preparation, development, revision or amendment of an IRP, Western proposed to make current customer IRPs more readily available to the public such as by posting IRPs on Western's Web site. Western proposed to continue to allow customers to request confidential treatment of sensitive information covered by an exemption in the Freedom of Information Act (FOIA) before the IRP is posted. If Western agrees, the sensitive information would be redacted and not released when the IRP is posted.

*Comment:* Customers expressed concern about third party access to IRPs without the knowledge or consent of the submitting entity. AMPUA and IEDA asked Western to provide assurance that any changes to EPAMP rules were consistent with customer obligations under FERC Critical Energy Infrastructure Information rules and Homeland Security and Rural Utilities Service regulations. Several commenters insisted that Western's regulations provide due process by offering IRP submitters an opportunity to be heard and the right to appeal a decision by Western to release information that the submitter believes is proprietary.

CREDA pointed out that this proposal is not mandated by EPAct 1992. CREDA further commented that the existing EPAMP rule already requires a customer to describe how it will share information with the public, and that this requirement is sufficient to accomplish Western's goals. CREDA stated that its membership had a variety of viewpoints on the proposal, which led CREDA to recommend as a general rule that Web postings of IRPs by Western only occur for those customers requesting it. CREDA and others commented that customers, not Western, should make the determination what information is considered proprietary or confidential. This approach, they contend, would avoid placing Western in an awkward or time-consuming position of determining what information should or should not be redacted. CREDA, KEPCo and others also warned that the proposal might result in additional direct and indirect costs being borne by customers through power rates, as it departs from the approach of assessing the costs of a FOIA request to the requesting party. UMPA, IEDA and UAMPS supported CREDA's comments.

KEPCo commented that purchase power information (and contractual terms and conditions) were more sensitive than in the past due to the competitive nature of the wholesale power business. KEPCo also warned that sensitive information could be excluded from a customer's IRP in response to a greater risk of public exposure, therefore diluting the value of the IRP to Western. KEPCo suggested that if a request for a customer's IRP is made, Western should notify the customer of the requesting party and the nature of the request prior to the release of any information.

SRP stated it was willing to have its IRP posted to Western's external Web site if proprietary and confidential information was not posted. SRP agreed with other comments that customers, and not Western, should determine what information is proprietary and confidential.

Tri-State pointed out that it has voluntarily posted its IRP on Tri-State's Web site, but asked Western to be careful not to place itself in the middle of communication between interested parties and customers regarding IRPs.

IEDA asked Western to honor FOIA's national security exemption, and to consider redrafting the proposed regulations with a further opportunity for public review and comment.

*Response:* Western appreciates all the comments submitted on this issue particularly with respect to the treatment of proprietary and confidential information. FOIA regulations, which apply under Western's existing IRP regulations, would continue to apply under the proposed change. Western cannot waive its authority to decide what information is released under FOIA regulations. Prior to releasing information to the public, Western will continue to examine IRPs in light of recognized FOIA exemptions that preclude the release of national security information and confidential commercial or financial data, among other exemptions. Western also notes that customers must continue to develop their IRPs in an open process allowing for public participation.

Western notes that the protocol under 10 CFR 1004.11 (Handling information of a private business, foreign government, or an international organization) remains in place and will be used in determining the course of responding to a FOIA request.

Accordingly, Western will adopt a modification of the proposal to make IRPs more readily available to the public by requiring IRPs to be posted on either the customer's publicly available Web site or Western's Web site. Customers that post on their own Web sites must notify Western of this decision when they submit their IRP. Western will create a hotlink on its Web site to IRPs posted on customer Web sites, thereby giving interested parties ready access to those IRPs. Western's Web site will, however, carry a disclaimer that an IRP posted on a customer Web site may not duplicate the IRP that the customer provided to Western. An interested party that seeks a copy of a customer IRP filed with Western could submit a FOIA request to obtain the document.

Western will post on its Web site the IRPs of customers that do not post on their own Web sites. Prior to posting, however, Western will, consistent with existing IRP and FOIA regulations, provide the customer an opportunity to submit its views on whether information contained in the IRP is exempt from the FOIA's mandatory public disclosure requirements.

*E. Other Comments*

*Comments:* Tri-State raised two additional comments in its comment letter, asking that additional changes be made to Western's IRP regulations. Specifically, Tri-State asked that EPAMP be amended to incorporate specific language recognizing the limited ability of wholesale suppliers to influence retail demand. Tri-State also asked that Western recognize the changing regulatory backdrop it faces, such as adoption of a renewable portfolio standard in Colorado and a defined level of expenditure for renewable resources requirement in New Mexico. Tri-State pointed out how existing language in EPAMP requires a Western customer with a service territory in multiple States to adopt the highest requirement and apply it to all members. Tri-State believes compliance with different State mandates seems to be impossible when integrated with other regulatory requirements. Tri-State urged Western to drop the multi-State requirement and eliminate additional and duplicative requirements within the IRP regulations.

*Response:* These comments are outside the scope of this process.

**III. Procedural Requirements**

*A. Determination Under Executive Order 12866*

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this rulemaking by the Office of Management and Budget (OMB) is required.

*B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Analysis Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western's Administrator certified that the proposal would have no significant adverse impact on a substantial number of small entities because the proposed revisions to these regulations streamline the IRP process, encourage customers to realize the benefits of regional IRPs, and protect customer sensitive IRP information. Western did not receive any comments on this certification.

*C. Review Under the Paperwork Reduction Act*

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

*D. Review Under the National Environmental Policy Act*

Western completed an environmental impact statement on EPAMP under the National Environmental Policy Act of 1969 (NEPA). The Record of Decision was published in the **Federal Register** on October 12, 1995 (60 FR 53181). Western's NEPA review assured all environmental effects related to these actions have been analyzed.

*E. Review Under Executive Order 13132*

Executive Order 13132 (64 FR 43255, August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the need for such actions. Western has determined that this final rule does not preempt State law, does not have a substantial direct effect on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. No further action is required by Executive Order 13132.

*F. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 requires each agency to assess the effects of Federal regulatory action on State, local, and Tribal Governments and the private sector. Western has determined that this regulatory action does not impose an additional Federal mandate on State, local, or Tribal Governments or on the private sector.

*G. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996), imposed on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and 3(b) to determine whether they are met or if it is unreasonable to meet one or more of them. Western has completed the required review and determined that, to the extent permitted by law, the regulations meet the relevant standards of Executive Order 12988.

*H. Review Under the Treasury and General Government Appropriations Act of 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277, 112 Stati 2691–528) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. The final rule has no impact on the autonomy or

integrity of the family as an institution. Accordingly, Western has concluded that it is not necessary to prepare a Family Policymaking Assessment.

*I. Review Under Executive Order 13084*

Under Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments), Western may not issue a discretionary rule that significantly or uniquely affects Indian Tribal Governments and imposes substantial direct compliance costs. The amendments involved in this rulemaking would not have such effects. Accordingly, Executive Order 13084 does not apply to this rulemaking.

*J. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996*

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*K. Approval of the Office of the Secretary*

The Secretary of Energy has approved the publication of today's final rule.

**List of Subjects in 10 CFR Part 905**

Electric power, Electric utilities, Energy, Energy conservation, Hydroelectric power and utilities, Reporting and recordkeeping requirements, Resource planning.

■ For the reasons set forth in the preamble, 10 CFR part 905 is amended as set forth below:

## PART 905—ENERGY PLANNING AND MANAGEMENT PROGRAM

■ 1. The authority citation is revised to read as follows:

**Authority:** 42 U.S.C. 7152, 7191; 42 U.S.C. 7275–7276c.

■ 2. Section 905.11(b)(4)(i) is revised to read as follows:

**§ 905.11 What must an IRP include?**

* * * * *

(b) * * *

(4) * * *

(i) As part of the public participation process for an MBA, the governing body of an MBA must approve the IRP in accordance with the MBA's by-laws, confirming that all requirements have been met. To indicate approval in the case of an individual IRP submitted by an entity with a board of directors or city council, a responsible official must sign the IRP submitted to Western or the customer must document passage of an approval resolution by the appropriate governing body included or referred to in the IRP.

* * * * *

■ 3. Section 905.12(b)(3) is revised to read as follows:

**§ 905.12 How must IRPs be submitted?**

* * * * *

(b) * * *

(3) Customers may submit IRPs as regional/IRP cooperatives when previously approved by Western. Western encourages customers to prepare ''regional'' IRPs. Regional IRPs are voluntary and participants need not be members of an MBA or a Western customer. Regional/IRP cooperatives may also submit small customer plans, minimum investment reports, and EE/RE reports on behalf of eligible IRP cooperative members.

* * * * *

■ 4. Section 905.23 is revised to read as follows:

**§ 905.23 What are the opportunities for using the Freedom of Information Act to request plan and report data?**

IRPs, small customer plans, minimum investment reports and EE/RE reports and associated data submitted to Western are subject to the Freedom of Information Act (FOIA) and may be made available to the public upon request. IRPs must be posted on a customer's publicly available Web site or on Western's Web site. Customers posting their IRPs on their own Web site must notify Western of this decision when they submit their IRP. A hotlink on Western's Web site to IRPs posted on customer Web sites gives interested parties ready access to those IRPs. Western will post on its Web site the IRPs of customers that do not post on their own Web sites. Prior to posting, Western will provide the customer the opportunity to submit its views on whether information contained in the IRP is exempt from the FOIA's mandatory public disclosure requirements. Customers may request confidential treatment of all or part of a submitted document consistent with FOIA exemptions. Western will determine whether particular information is exempt from public access. Western will not disclose to the public information it has determined to be exempt, recognizing that certain competition-related customer information may be proprietary.

Dated: May 29, 2008.

**Timothy J. Meeks,**

*Administrator.*

[FR Doc. E8–14031 Filed 6–19–08; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 23

### Miscellaneous Markings and Placards

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This action corrects a typographical error that appeared in a final rule, which the FAA published in the **Federal Register**. In that final rule, the FAA inadvertently changed a word. The intent of this action is to correct the error in the regulation to ensure the requirement is clear and accurate.

**DATES:** *Effective Dates:* Effective on June 20, 2008.

**FOR FURTHER INFORMATION CONTACT:** Robert Stegeman, Regulations and Policy, ACE–111, Federal Aviation Administration, 901 Locust Street, Kansas City, MO 64106; telephone (816) 329–4140; e-mail *robert.stegeman@faa.gov.*

**SUPPLEMENTARY INFORMATION:** On August 6, 1993, the FAA published in the **Federal Register** (58 FR 42166) a final rule that, among other changes, amended § 23.1557 by revising § 23.1557(c)(1). In revising § 23.1557(c)(1), the word ''filler'' was inadvertently changed to ''filter.'' This document corrects § 23.1557(c)(1) to reflect the correct word ''filler.'' This correction will not impose any additional requirements.

**Technical Amendment**

This technical amendment corrects a typographical error that appears in 14 CFR 23.1557(c)(1).

**Justification for Immediate Adoption**

Because this action corrects merely a typographical error, the FAA finds that notice and public comment under 5 U.S.C. 553(b) is unnecessary. For the same reason, the FAA finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective upon publication.

**List of Subjects in 14 CFR Part 23**

Aircraft, Aviation safety, Signs and symbols.

**The Amendment**

■ Accordingly, Title 14 of the Code of Federal Regulations (CFR) part 23 is amended as follows:

## PART 23–AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

■ 1. The authority citation for part 23 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40013, 44701, 44702, 44704.

■ 2. Amend § 23.1557 by revising § 23.1557(c)(1) introductory text to read as follows:

**§ 23.1557 Miscellaneous markings and placards.**

* * * * *

(c) * * *

(1) Fuel filler openings must be marked at or near the filler cover with—

* * * * *

Issued in Washington, DC on June 16, 2008.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

[FR Doc. E8–13900 Filed 6–19–08; 8:45 am]

**BILLING CODE 4910–13–P**

## EXECUTIVE OFFICE OF THE PRESIDENT

### Office of the United States Trade Representative

### 15 CFR Part 2004

### Freedom of Information Act

**AGENCY:** Office of the United States Trade Representative, Executive Office of the President.

**ACTION:** Final rule.

**SUMMARY:** The Office of the United States Trade Representative (USTR) is issuing a final rule to update its Freedom of Information Act (FOIA) regulations. USTR last made changes to its FOIA regulations in 1975. Since that time the information relating to USTR has changed and there have been several changes to the FOIA, which needed to be reflected in the regulations.

**DATES:** *Effective Date:* July 21, 2008.

**FOR FURTHER INFORMATION CONTACT:** David Apol, USTR, telephone (202) 395–9633, FAX (202) 395–3640.

**SUPPLEMENTARY INFORMATION:** USTR last made changes to its FOIA regulations in 1975. 40 FR 30934, Jul. 24, 1975.

Since that time, pertinent information relating to USTR has changed and USTR has made changes in the way it implements the FOIA. In addition, Executive Order 13392 mandated changes in federal agency FOIA practices to ensure prompt and effective response to the public's requests for information. 70 FR 75373, Dec. 19, 2005. Finally, Public Law 110–175, the OPEN Government Act of 2007, amended the definition of ''representative of the news media'' and made other changes to the FOIA.

In response to Executive Order 13392, USTR created a FOIA plan requiring it to revise its FOIA regulations and to improve the efficiency of information disclosure under the FOIA. On February 14, 2008, USTR published a proposed rule in the **Federal Register**, 73 FR 8629, to amend its FOIA regulations and requested public comments. USTR received no comments during the 60-day comment period. USTR's final regulations are identical to those in the proposed rule.

This final rule updates USTR's FOIA regulations to provide current information about USTR and to more accurately reflect its FOIA practices. The final rule also brings USTR's fee structure into conformity with the Office of Management and Budget's (OMB's) Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10012, Mar. 27, 1987. The final rule also incorporates changes made by the OPEN Government Act of 2007.

### Executive Order 12866

The United States Trade Representative certifies that the final rule is not significant for purposes of Executive Order 12866, 58 FR 51735, Oct. 4, 1993. Therefore, OMB has not reviewed the final rule under that Executive Order.

### Regulatory Flexibility Act

The United States Trade Representative certifies that this final rule is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601, because it will not have a significant economic impact on a substantial number of small entities. For this reason, USTR has not prepared a Regulatory Flexibility Statement and Analysis.

### Paperwork Reduction Act

The United States Trade Representative certifies that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, does not apply because the final rule does not seek to collect information. Therefore, it does not require OMB approval.

■ For the reasons stated in the preamble, USTR revises 15 CFR Part 2004 to read as follows:

## PART 2004—FREEDOM OF INFORMATION POLICIES AND PROCEDURES

**Organization**

Sec.
2004.1 In general.
2004.2 Authority and functions.
2004.3 Organization.

**Procedures**

2004.4 Availability of records.
2004.5 Accessing records without request.
2004.6 Requesting records.

**Costs**

2004.7 Definitions.
2004.8 Fees in general.
2004.9 Fees for categories of requesters.
2004.10 Other charges.
2004.11 Payment and waiver.

**Authority:** 5 U.S.C. 552; Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10012, Mar. 27, 1987.

### Organization

#### § 2004.1 In general.

This information is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information Act, 5 U.S.C. 552, as amended (FOIA). This regulation should be read in conjunction with the FOIA.

#### § 2004.2 Authority and functions.

The Office of the United States Trade Representative (USTR) negotiates directly with foreign governments to conclude trade agreements, and resolve trade disputes, and participates in global trade policy organizations. USTR consults with governments, business groups, legislators, and public interest groups to obtain their views on trade issues and explain the President's trade policy positions. The general functions of USTR, as provided by statute, are to develop and coordinate international trade and direct investment policy, advise and assist the President, represent the United States in international trade negotiations, and provide policy guidance to federal agencies on international trade matters. The United States Trade Representative, a cabinet officer, serves as a vice chairman of the Overseas Private Investment Corporation, a Board member of the Millennium Challenge Corporation, a non-voting member of the Export-Import Bank, and a member of the National Advisory Council on International Monetary and Financial Policies.

#### § 2004.3 Organization.

USTR's main office is located in Washington, DC. It also maintains a mission in Geneva, Switzerland.

**Procedures**

**§ 2004.4 Availability of records.**

USTR's publicly accessible records are available through USTR's public reading room or its Web site. USTR also provides records to individual requesters in response to FOIA requests. USTR generally withholds predecisional, deliberative documents and classified trade negotiating and policy documents under 5 U.S.C. 552(b).

**§ 2004.5 Accessing records without request.**

(a) *Public reading room.* USTR maintains and makes available for public inspection and copying USTR records pertaining to matters within the scope of 5 U.S.C. 552(a)(2), as amended. Most records in USTR's public reading room comprise responses to **Federal Register** notices that USTR has issued. USTR's public reading room is located at 1724 F Street, NW., Washington, DC. Access to the reading room is by appointment only. Contact USTR's FOIA Officer at (202) 395–6186 to set up an appointment.

(b) *Electronic resources.* Certain USTR records, including press releases and other public issuances, are available electronically from USTR's homepage at *http://www.ustr.gov.* USTR encourages requesters to visit its Web site before making a request for records under § 2004.6.

**§ 2004.6 Requesting records.**

(a) *Written requests required.* For records not available as described under § 2004.5, requesters wishing to obtain information from USTR must submit a written request to USTR's FOIA Officer. Requests should be addressed to FOIA Officer, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. As there may be delays in mail delivery, it is advisable to send request via facsimile to (202) 395–9458.

(b) *Contents of requests.* Requests shall be as specific as possible and shall reasonably describe the records sought so that the records can be located with a reasonable amount of effort. The request should identify the desired record or reasonably describe it and should include information such as the date, title or name, author, recipient, and subject matter of the record.

(c) *Response to requests*—(1) *Processing.* The FOIA Officer shall ordinarily determine within 20 days (except Saturdays, Sundays, and federal holidays) after receiving a request for records, whether it is appropriate to grant or deny the request. The 20-day period may be tolled one time if the FOIA Officer requests information from the requestor or if additional time is necessary to clarify issues with the requestor regarding a fee assessment.

(i) *Request granted.* If the FOIA Officer decides to grant the request, the FOIA Officer shall promptly provide the requester written notice of the decision. The FOIA Officer shall normally include with the notice both the requested records and a copy of the decision.

(ii) *Request denied.* If the FOIA Officer denies the request, in full or part, the FOIA Officer shall provide the requester written notice of the denial together with the approximate number of pages of information withheld and the exemption under which the information was withheld. The notice shall also describe the procedure for filing an appeal.

(2)(i) *Expedited processing.* At the time a requester submits an initial request for records the requester may ask the FOIA Officer in writing to expedite processing of the request. The request for expedited processing must be accompanied by a written statement, true and correct to the best of the requester's knowledge and belief, explaining why expedited processing is warranted. The FOIA Officer shall generally grant requests for expedited processing of requests for records, and appeals of denials under paragraph (d)(2) of this section, whenever the FOIA Officer determines that:

(A) Failure to obtain the requested records on an expedited basis could reasonably pose an imminent threat to a person's life or physical safety; or

(B) With respect to a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public about government activity that is the specific subject of the FOIA request.

(ii) The FOIA Officer shall ordinarily decide within ten days after receiving a request for expedited processing whether to grant it and shall notify the requester of the decision. If the FOIA Officer grants a request for expedited processing, the FOIA Officer shall process the request as soon as practicable. If the FOIA Officer denies a request for expedited processing, USTR shall act expeditiously on any appeal of the denial.

(3) *Extension for unusual circumstances*—(i) *In general.* If the FOIA Officer determines that unusual circumstances exist, the FOIA Officer may extend for no more than ten days (except Saturdays, Sundays, and Federal holidays) the time limits described in paragraph (c)(1) of this section by providing written notice of the extension to the requester. The FOIA Officer shall include with the notice a brief statement of the reason for the extension and the date the FOIA Officer expects to make the determination.

(ii) *Additional procedures.* The FOIA Officer shall provide written notice to the requester if the FOIA Officer decides that the determination cannot be made within the time limit described in paragraph (c)(3)(i) of this section. The notice shall afford the requester an opportunity to limit the scope of the request to the extent necessary for the FOIA Officer to process it within that time limit or an opportunity to arrange a longer period for processing the request.

(d) *Appeals*—(1) *Initiating appeals.* Requesters not satisfied with the FOIA Officer's written decision may request USTR's FOIA Appeals Committee to review the decision. Appeals must be delivered in writing within 60 days of the date of the decision and shall be addressed to the FOIA Appeals Committee, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. As there may be delays in mail delivery, it is advisable to FAX appeals to (202) 395–9458. An appeal shall include a statement specifying the records that are the subject of the appeal and explaining why the Committee should sustain the appeal.

(2) *Appeal decisions.* The Committee shall ordinarily decide the appeal within 20 working days from the date it receives the appeal. If the Committee denies the appeal in full or part, the Committee shall promptly notify the requester in writing of the Committee's decision and the provisions for judicial review. If the Committee sustains the appeal, the FOIA Officer shall notify the requester in writing and shall make available to the requester copies of the releasable records once the requester pays any fees that USTR assesses under §§ 2004.8 through 2004.10.

**Costs**

**§ 2004.7 Definitions.**

For purposes of these regulations:

(a) ''*Commercial use request*'' means a request from or on behalf of a person who seeks information for a use or purpose that furthers the requester's or other person's commercial, trade, or profit interests.

(b) ''*Direct costs*'' means those costs incurred in searching for and duplicating (and, in the case of commercial use requests, reviewing) documents to respond to a FOIA request. Direct costs include, for example, salaries of employees who

perform the work and costs of conducting large-scale computer searches.

(c) ''*Duplicate*'' means to copy records to respond to a FOIA request. Copies can take the form of paper, audio-visual materials, or electronic records, among others.

(d) ''*Educational institution*'' means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, that operates a program or programs of scholarly research.

(e) ''*Non-commercial scientific institution*'' means an institution that is not operated on a commercial basis and that operates solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(f) ''*Representative of the news media*'' means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

(g) ''*Review*'' means to examine a record to determine whether any portion of the record may be withheld and to process a record for disclosure, including by redacting it.

(h) ''*Search for*'' means look for and retrieve records covered by a FOIA request, including by looking page-by-page or line-by-line to identify responsive material within individual records.

**§ 2004.8 Fees in general.**

USTR shall charge fees that recoup the full allowable direct costs it incurs in responding to FOIA requests. USTR may assess charges for time spent searching for records even if USTR fails to locate the records or if the records are located and determined to be exempt from disclosure. In general, USTR shall apply the following fee schedule, subject to §§ 2004.9 through 2004.11:

(a) *Manual searches.* Time devoted to manual searches shall be charged on the basis of the salary of the employee(s) conducting the search (basic hourly rate(s) of pay for the employee(s), plus 16 percent).

(b) *Electronic searches.* Fees shall reflect the direct cost of conducting the search. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for and printing records responsive to the FOIA request and operator/programmer salary attributable to the search.

(c) *Record reviews.* Time devoted to reviewing records shall be charged on the same basis as under paragraph (a) of this section, but shall only be applicable to the initial review of records located in response to commercial use requests.

(d) *Duplication.* Fees for copying paper records or for printing electronic records shall be assessed at a rate of $.15 per page. For other types of copies such as disks or audio visual tapes, USTR shall charge the direct cost of producing the document(s). If duplication charges are expected to exceed $25, the FOIA Officer shall notify the requester, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. If a requester wishes to limit costs, the FOIA Officer shall provide the requester an opportunity to reformulate the request in order to reduce costs. If the requester reformulates a request, it shall be considered a new request and the 20-day period described in § 2004.6(c)(1) shall be deemed to begin when the FOIA Officer receives the request.

(e) *Advance payments required.* The FOIA Officer may require a requester to make an advance deposit of up to the amount of the entire anticipated fee before the FOIA Officer begins to process the request if:

(1) The FOIA Officer estimates that the fee will exceed $250; or

(2) The requester has previously failed to pay a fee in a timely fashion.

When the FOIA Officer requires a requester to make an advance payment, the 20-day period described in § 2004.6(c)(1) shall begin when the FOIA Officer receives the payment.

(f) *No assessment of fee.* USTR shall not charge a fee to any requester if:

(1) The cost of collecting the fee would be equal to or greater than the fee itself; or

(2) After December 31, 2008, USTR fails to comply with any time limit under the Freedom of Information Act for responding to a request for records where no unusual or exceptional circumstances apply.

**§ 2004.9 Fees for categories of requesters.**

USTR shall assess fees for certain categories of requesters as follows:

(a) *Commercial use requesters.* In responding to commercial use requests, USTR shall assess fees that recover the full direct costs of searching for, reviewing, and duplicating records.

(b) *Educational institutions.* USTR shall provide records to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To qualify for inclusion in this fee category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scholarly research, not an individual goal.

(c) *Representatives of the news media.* USTR shall provide records to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages.

(d) *All other requesters.* USTR shall charge requesters who do not fall within paragraphs (a) through (c) of this section fees that recover the full direct cost of searching for and duplicating records, excluding charges for the first 100 pages of reproduction and the first two hours of search time.

**§ 2004.10 Other charges.**

USTR may apply other charges, including the following:

(a) *Special charges.* USTR shall recover the full cost of providing special services, such as sending records by express mail, to the extent that USTR elects to provide them.

(b) *Interest charges.* USTR may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the FOIA Officer sent the billing. Interest shall be charged at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of billing.

(c) *Aggregating requests.* When the FOIA Officer reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of avoiding fees, the FOIA Officer shall aggregate those requests and charge accordingly.

**§ 2004.11 Payment and waiver.**

(a) *Remittances.* Payment shall be made in the form of check or money order made payable to the Treasury of the United States. At the time the FOIA Officer notifies a requestor of the applicable fees, the Officer shall inform the requestor of where to send the payment.

(b) *Waiver.* USTR may waive all or part of any fee provided for in §§ 2004.8 through 2004.9 when the FOIA Officer deems that disclosure of the information is in the general public's interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. In determining whether a fee should be waived, the FOIA Officer may consider whether:

(1) The subject matter specifically concerns identifiable operations or activities of the government;

(2) The information is already in the public domain;

(3) Disclosure of the information would contribute to the understanding of the public-at-large as opposed to a narrow segment of the population;

(4) Disclosure of the information would significantly enhance the public's understanding of the subject matter;

(5) Disclosure of the information would further a commercial interest of the requester; and

(6) The public's interest is greater than any commercial interest of the requester.

**Susan C. Schwab,**

*United States Trade Representative.*

[FR Doc. E8–14034 Filed 6–19–08; 8:45 am]

**BILLING CODE 3190–W8–P**

## DEPARTMENT OF STATE

### 22 CFR Part 62

**[Public Notice: 6267]**

**RIN 1400–AC35**

### Exchange Visitor Program—College and University Students, Student Interns

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** The Department is hereby revising its regulations regarding College and University Students. The Final Rule creates a new subcategory of the College and University Student category—''Student Interns.'' Participation in this new sub-category is open to foreign students enrolled and pursuing a degree at post-secondary academic institutions outside the United States. Student interns may participate in a student internship program for up to 12 months at each degree level.

**DATES:** *Effective Date:* This Final Rule is effective July 21, 2008.

**SUPPLEMENTARY INFORMATION:** The Department of State (Department) designates U.S. government, academic, and private sector entities to conduct educational and cultural exchange programs pursuant to a broad grant of authority provided by the Mutual Educational and Cultural Exchange Act of 1961, as amended (Fulbright-Hays Act). Under this authority, designated program sponsors facilitate the entry into the United States of more than 350,000 exchange participants each year.

In June 2007, the Department established a new exchange visitor category—''intern''—by amending existing regulations set forth in 22 CFR 62.22 (72 FR 33669, June 19, 2007). Now, private sector organizations can offer internships to individuals with less training and experience than had been required of ''trainee'' category participants. To be eligible as an intern in a private sector program, foreign nationals must be currently enrolled in and pursuing studies at an academic institution or a recent graduate (*i.e.*, within 12 months) from such institution. As an intern, the intern program participant enters the United States to pursue a structured and guided work-based internship program in his or her specific academic field. Prior work experience is not an eligibility requirement for participation.

Not wanting to limit the opportunity to offer internships to the private sector only, the Department published a proposed companion rule in the **Federal Register** (72 FR 31008) on June 5, 2007. This rule sought comment on a proposed program that would allow American colleges or universities to conduct internship programs. As noted in the rule, in significant areas the proposed regulations governing the new ''student intern'' category track the internship regulations already in place for private sector internship program sponsors. The primary difference is that the student internship—as its name implies—is available only to students and not graduates.

To be eligible to participate in the new student intern sub-category, a foreign national must be a student currently enrolled in an accredited post-secondary academic institution outside the United States. A student intern may participate in a student internship program for up to 12 months at each degree level. For example, an exchange visitor could enter the United States to participate in a student internship program while pursuing the equivalent of a baccalaureate degree program. This intern could participate in an internship program in the United States for up to 12 months. This same individual could also participate in yet another student internship program for up to 12 months if he or she later pursues the next higher degree level (*i.e.*, master's degree program). A student who changes majors at the baccalaureate level—and is pursuing a separate degree—may participate in an internship subsequent to an initial internship in the original field of study.

Foreign students may be selected to participate in the new student intern sub-category if they meet the following eligibility criteria: the post-secondary academic institution listed as the sponsor on the Form DS–2019 has accepted the individual into an internship program; and the student seeks to enter the United States to engage primarily in a student internship program, rather than to engage in employment or provide services to an employer. Furthermore, a student intern must be in good academic standing with the post-secondary academic institution at which he or she is currently enrolled. Finally, the student intern will return to his or her prior academic studies following completion of the student internship program and fulfill his or her degree requirements, thus students that have completed their degree requirements will not be eligible for the student intern program.

These new regulations address the obligations of a sponsor and any third party—either domestic or overseas—with whom the sponsor contracts to assist in the recruiting, selecting, screening, orienting, placing, training, or evaluating of its program participants. Required is a written agreement with third parties outlining the full relationship between the parties on all matters involving the Exchange Visitor Program generally and the student internship specifically. For program integrity, third parties must provide their Dun & Bradstreet identification numbers, which will assist sponsors with their screening and vetting of all third parties with whom they have entered into a required written agreement.

We anticipate that a wide range of U.S. businesses and governmental or non-governmental entities will host foreign students in student internship programs arranged by academic sponsors. These regulations set baseline standards for this activity. Sponsors will be required to ensure that host organizations are legitimate entities, are appropriately registered or licensed to conduct their business, and possess and maintain the ability and resources to provide structured and guided work-based experience according to individualized Training and Internship Placement Plans (T/IPP—Form DS–7002). In some instances, a sponsor may be required to conduct a site visit of a host organization's facility. In vetting a potential host organization, a sponsor must collect sufficient evidence to support its finding that the potential host organization meets the standards necessary for a sponsor to properly place participants with them.

For each student internship, a sponsor must complete and obtain requisite signatures for the T/IPP. Each T/IPP must set forth the goals and objectives of the internship; the student internship

program details (location, contact information, number of hours per week of work and compensation therefore (if any) a description of the supervision the intern will receive, and the dates of the student internship program); a description of how the student internship program will enhance the student intern's educational program at his or her home institution; and a determination as to whether and to what extent the student intern has previously taken part in a student internship program in the United States. Finally, to ensure program quality, a sponsor must take necessary steps to ensure that they are compliant with these regulations and that the student intern's program was effective, appropriate, and achieved its stated goals and objectives.

The Final Rule permits a student intern to engage in full-time employment during the internship program as outlined on the T/IPP, with or without wages or other compensation. Employment is not required for participation in the program. A student intern may be employed, however, only with the approval of the responsible officer and the student's home institution's dean or academic advisor.

These regulations prohibit a sponsor from placing a student intern in an unskilled or casual labor position, in a position that requires or involves child care or elder care, in a position in the field of aviation, or in any kind of position that involves patient care or contact. Finally, a sponsor must not place a student intern in a position that involves more than 20 per cent clerical work.

**Comment Analysis**

Twelve (12) parties submitted comments to the Department on the Proposed Rule. Four commenting parties opined that the internship should not be required to be in the student's field of study. Upon reconsideration, the Department agrees that this requirement would be too restrictive, and has therefore eliminated it. Otherwise, a prospective participant who was pursuing a degree in fields such as the liberal arts would be excluded from participating in a student internship program. The fact that a student intern must fulfill a degree requirement will eliminate the chance of a student using this category for employment purposes.

Many commenting parties criticized the Proposed Rule's requirement that a student intern be enrolled in and pursuing full-time studies at a post-secondary academic institution outside the United States and that the internship be tied to a degree requirement. Specifically, seven commenting parties opposed the enrollment requirement and six opposed the degree requirement. The Department believes that such criticisms are without merit and conflict with programs sponsored by academic institutions. The Department believes that it is reasonable to require a sponsor to obtain evidence from a student's foreign institution certifying that the student is currently enrolled in and pursuing a degree at such institution.

Eight commenting parties opined that the exclusion of numerated positions was too restrictive for an internship sponsored by a college or university. These exclusions, however, mirror those in the training and intern category and are consistent with the Exchange Visitor Program's historical exclusion of clinical training. Accordingly, the Department retains the requirement that a student intern not be placed in an unskilled or casual labor position, a position that requires or involves child care or elder care, a position in the field of aviation, or in clinical positions or engaging in any other kind of work that involves patient care or contact, including any work that would require a student intern to provide therapy, medication, or other clinical or medical care (*e.g.*, sports or physical therapy, psychological counseling, nursing, dentistry, veterinary medicine, social work, speech therapy, or early childhood education).

One commenting party requested to be able to conduct interviews with applicants over the telephone. The Department has agreed to permit the use of telephone interviews, when necessary.

Under the Proposed Rule, a current college and university sponsor wishing to provide student internships was required to apply for designation in the new intern subcategory. Six commenting parties opposed this requirement. Accordingly, the student intern will be established as a subcategory of the college and university category, and current academic sponsors will automatically be allowed to provide student internships once the final rule is published and the updates are implemented in SEVIS.

Seven commenting parties voiced concerns regarding the Training/Internship Placement Plan (T/IPP—Form DS–7002). The Department will address modifications to Form DS–7002 in a future **Federal Register** Notice.

Two commenting parties opined that a student intern should be allowed to have multiple internships during each degree level. The Department respectfully disagrees, noting that the regulations do allow a student who is pursuing an additional degree at the same level to participate in an additional internship program.

Two commenting parties opined that the requirements for the Fair Labor Standards Act and the MSAWPA are not appropriate for college and university offered internships. They believe that these requirements were solely meant for internships offered within the private sector. The Department respectfully disagrees and retains these requirements.

*Regulatory Analysis*

Administrative Procedure Act

The Department has determined that this Final Rule involves a foreign affairs function of the United States and is consequently exempt from the procedures required by 5 U.S.C. 553 pursuant to 5 U.S.C. 553(a)(1).

Small Business Regulatory Enforcement Fairness Act of 1996

This rule has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Regulatory Flexibility Act/Executive Order 13272: Small Business

Since this rulemaking is exempt from 5 U.S.C. 553, and no other law requires the Department to give notice of proposed rulemaking, this rulemaking also is not subject to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) and Executive Order 13272, section 3(b).

Executive Order 12866, as Amended

The Department of State does not consider this Final Rule to be a ''significant regulatory action'' under Executive Order 12866, as amended, § 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the Final Rule to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 12988

The Department has reviewed this Final Rule in light of §§ 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

Executive Orders 12372 and 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The provisions of Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

Paperwork Reduction Act

The information collection requirements contained in this rulemaking (Form DS–7002) have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. Chapter 35, under OMB Control Number 1405–0170, expiration date: 07/31/2009.

**List of Subjects in 22 CFR Part 62**

Cultural exchange programs, Reporting and recordkeeping requirements.

■ Accordingly, 22 CFR part 62 is proposed to be amended as follows:

## PART 62—EXCHANGE VISITOR PROGRAM

■ 1. The authority citation for part 62 is revised to read as follows:

**Authority:** 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451–2460; Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105–277, Div. G, 112 Stat. 2681 *et seq.*; Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168; the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. 104–208, Div. C, 110 Stat. 3009–546, as amended; Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), Pub. L. 107–56, Sec. 416, 115 Stat. 354; and the Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107–173, 116 Stat. 543.

■ 2. Section 62.23 is revised to read as follows:

**§ 62.23 College and university students.**

(a) *Purpose.* A program under this section provides foreign students the opportunity to participate in a designated exchange visitor program while studying at a degree-granting post-secondary accredited academic institution or participating in a student internship program which fulfills the student's academic study. A student sponsored in this category may participate in a degree, non-degree, or student internship program. Such an exchange is intended to promote mutual understanding by fostering the exchange of ideas between foreign students and their American counterparts.

(b) *Designation.* The Department of State may, in its sole discretion, designate *bona fide* programs which offer foreign students the opportunity to study in the United States at a post-secondary accredited academic institution or to participate in a student internship program.

(c) *Selection criteria.* A sponsor selects the college and university students who participate in its exchange visitor program. A sponsor must secure sufficient background information on the students to ensure that they have the academic credentials required for its program. A student is eligible for participation in the Exchange Visitor Program if at any time during his or her educational program in the United States:

(1) The student or his or her program is financed directly or indirectly by:

(i) The United States Government;

(ii) The government of the student's home country; or

(iii) An international organization of which the United States is a member by treaty or statute;

(2) The program is carried out pursuant to an agreement between the United States Government and a foreign government;

(3) The program is carried out pursuant to written agreement between:

(i) American and foreign academic institutions;

(ii) An American academic institution and a foreign government; or

(iii) A state or local government in the United States and a foreign government;

(4) The student is supported substantially by funding from any source other than personal or family funds; or

(5) The student is participating in a student internship program as described in paragraph (i) of this section.

(d) *Admissions requirement.* In addition to satisfying the requirements of § 62.10(a), a sponsor must ensure that the student has been admitted to, or accepted for a student internship program offered by, the post-secondary accredited academic institution listed on the Form DS–2019 before issuing the Form.

(e) *Full course of study requirement.* A student, other than a student intern described in paragraph (h)(3)(i) of this section, must pursue a full course of study at a post-secondary accredited academic institution in the United States as defined in § 62.2, except under the following circumstances:

(1) *Vacation.* During official school breaks and summer vacations if the student is eligible and intends to register for the next term. A student attending a school on a quarter or trimester calendar may be permitted to take the annual vacation during any one of the quarters or trimesters instead of during the summer.

(2) *Medical illness.* If the student is compelled to reduce or interrupt a full course of study due to an illness or medical condition and the student presents to the responsible officer a written statement from a physician requiring or recommending an interruption or reduction in studies.

(3) *Bona fide academic reason.* If the student is compelled to pursue less than a full course of study for a term and the student presents to the responsible officer a written statement from the academic dean or advisor recommending the student to reduce his or her academic load to less than a full course of study due to an academic reason.

(4) *Non-degree program.* If the student is engaged full time in a prescribed course of study in a non-degree program of up to 24 months duration conducted by a post-secondary accredited academic institution.

(5) *Academic training.* If the student is participating in authorized academic training in accordance with paragraph (f) of this section.

(6) *Final term.* If the student needs less than a full course of study to complete the academic requirements in his or her final term.

(f) *Academic training*—(1) *Purpose.* The primary purpose of academic training is to permit a student, other than a student intern described in paragraph (i) of this section, to participate in an academic training program during his or her studies, without wages or other remuneration, with the approval of the academic dean or advisor and the responsible officer.

(2) *Conditions.* A student, other than a student intern described in paragraph (i) of this section, may be authorized to

participate in an academic training program for wages or other remuneration:

(i) During his or her studies; or

(ii) Commencing not later than 30 days after completion of his or her studies, if the criteria, time limitations, procedures, and evaluations listed below in paragraphs (f)(3) through (f)(6) are satisfied:

(3) *Criteria.* (i) The student is primarily in the United States to study rather than engage in academic training;

(ii) The student is participating in academic training that is directly related to his or her major field of study at the post-secondary accredited academic institution listed on his or her Form DS–2019;

(iii) The student is in good academic standing with the post-secondary accredited academic institution; and

(iv) The student receives written approval in advance from the responsible officer for the duration and type of academic training.

(4) *Time limitations.* The student is authorized to participate in academic training for the length of time necessary to complete the goals and objectives of the training, provided that the amount of time for academic training:

(i) Is approved by the academic dean or advisor and approved by the responsible officer;

(ii) For undergraduate and pre-doctoral training, does not exceed 18 months, inclusive of any prior academic training in the United States, or the period of full course of study in the United States, whichever is less; except that additional time for academic training is allowed to the extent necessary for the exchange visitor to satisfy the mandatory requirements of his or her degree program in the United States;

(iii) For post-doctoral training, does not exceed a total of 36 months, inclusive of any prior academic training in the United States as an exchange visitor, or the period of the full course of study in the United States, whichever is less.

(5) *Procedures.* To obtain authorization to engage in academic training:

(i) The student must present to the responsible officer a letter of recommendation from the student's academic dean or advisor setting forth:

(A) The goals and objectives of the specific academic training program;

(B) A description of the academic training program, including its location, the name and address of the training supervisor, number of hours per week, and dates of the training;

(C) How the academic training relates to the student's major field of study; and

(D) Why it is an integral or critical part of the academic program of the student.

(ii) The responsible officer must:

(A) Determine if and to what extent the student has previously participated in academic training as a student, in order to ensure the student does not exceed the period permitted in paragraph (f) of this section;

(B) Review the letter of recommendation required in paragraph (f)(5)(i) of this section; and

(C) Make a written determination of whether the academic training currently being requested is warranted and the criteria and time limitations set forth in paragraph (f)(3) and (4) of this section are satisfied.

(6) *Evaluation requirements.* The sponsor must evaluate the effectiveness and appropriateness of the academic training in achieving the stated goals and objectives in order to ensure the quality of the academic training program.

(g) *Student employment.* A student, other than a student intern described in paragraph (i) of this section, may engage in part-time employment when the following criteria and conditions are satisfied.

(1) The student employment:

(i) Is pursuant to the terms of a scholarship, fellowship, or assistantship;

(ii) Occurs on the premises of the post-secondary accredited academic institution the visitor is authorized to attend; or

(iii) Occurs off-campus when necessary because of serious, urgent, and unforeseen economic circumstances which have arisen since acquiring exchange visitor status.

(2) A student may engage in employment as provided in paragraph (g)(1) of this section if the:

(i) Student is in good academic standing at the post-secondary accredited academic institution;

(ii) Student continues to engage in a full course of study, except for official school breaks and the student's annual vacation;

(iii) Employment totals no more than 20 hours per week, except during official school breaks and the student's annual vacation; and

(iv) The responsible officer has approved the specific employment in advance and in writing. Such approval may be valid for up to 12 months, but is automatically withdrawn if the student's program is transferred or terminated.

(h) *Duration of participation.* (1) Degree student. A student who is in a degree program may be authorized to participate in the Exchange Visitor Program as long as he or she is either:

(i) Studying at the post-secondary accredited academic institution listed on his or her Form DS–2019 and:

(A) Pursuing a full course of study as set forth in paragraph (e) of this section, and

(B) Maintaining satisfactory advancement towards the completion of the student's academic program; or

(ii) Participating in an authorized academic training program as permitted in paragraph (f) of this section.

(2) Non-degree student. A student who is in a non-degree program may be authorized to participate in the Exchange Visitor Program for up to 24 months. Such a student must be:

(i) Studying at the post-secondary accredited academic institution listed on his or her Form DS–2019 and:

(A) Participating full-time in a prescribed course of study; and

(B) Maintaining satisfactory advancement towards the completion of his or her academic program; or

(ii) Participating in an authorized academic training program as permitted in paragraph (f) of this section.

(3) Student Intern. A student intern participating in a student internship program may be authorized to participate in the Exchange Visitor Program for up to 12 months for each degree/major as permitted in paragraph (i) of this section as long as the student intern is:

(i) Engaged full-time in a student internship program sponsored by the post-secondary accredited academic institution that issued Form DS–2019; and

(ii) Maintaining satisfactory advancement towards the completion of his or her student internship program.

(i) *Student Intern.* The student intern is a foreign national enrolled in and pursuing a degree at an accredited post-secondary academic institution outside the United States and is participating in a student internship program in the United States that will fulfill the educational objectives for his or her current degree program at his or her home institution. The student intern must meet the following requirements:

(1) *Criteria.* (i) In addition to satisfying the general requirements set forth in § 62.10(a), a sponsor must ensure that the student intern has verifiable English language skills sufficient to function on a day-to-day basis in the internship environment. English language proficiency must be verified through a sponsor-conducted interview, by a recognized English language test, or by signed

documentation from an academic institution or English language school.

(ii) The student intern is primarily in the United States to engage in a student internship program rather than to engage in employment or provide services to an employer;

(iii) The student intern has been accepted into a student internship program at the post-secondary accredited academic institution listed on his or her Form DS–2019;

(iv) The student intern is in good academic standing with the post-secondary academic institution outside the United States from which he or she is enrolled in and pursuing a degree; and

(v) The student intern will return to the academic program and fulfill and obtain a degree from such academic institution after completion of the student internship program.

(2) *Program requirements.* In addition to the requirements set forth in Subpart A, a sponsor must ensure that:

(i) It does not issue Form DS–2019 to a potential participant in a student internship program until it has secured a placement for the student intern and it completes and secures the requisite signatures on Form DS–7002 (T/IPP);

(ii) A student intern has sufficient finances to support himself or herself and dependants for their entire stay in the United States, including housing and living expenses; and

(iii) The student internship program exposes participants to American techniques, methodologies, and technology and expands upon the participants' existing knowledge and skills. A program must not duplicate the student intern's prior experience.

(3) *Obligations of student internship program sponsors.* (i) A sponsor designated by the Department to administer a student internship program must:

(A) Ensure that the student internship program is full-time (minimum of 32 hours a week); and

(B) Ensure that any host organization or other third party involved in the recruitment, selection, screening, placement, orientation, evaluation, or provision of a student internship program is sufficiently educated on the goals, objectives, and regulations of the Exchange Visitor Program and adheres to all regulations set forth in this Part as well as all additional terms and conditions governing Exchange Visitor Program administration that the Department may from time to time impose.

(ii) A sponsor must ensure that it or any host organization acting on the sponsor's behalf:

(A) Has sufficient resources, plant, equipment, and trained personnel available to provide the specified student internship program;

(B) Does not displace full- or part-time or temporary or permanent American workers or serve to fill a labor need and ensures that the position that the student interns fills exists solely to assist the student intern in achieving the objectives of his or her participation in a student internship program; and

(C) Certifies that student internship programs in the field of agriculture meet all the requirements of the Fair Labor Standards Act, as amended (29 U.S.C. 201 *et seq.*) and the Migrant and Seasonal Agricultural Worker Protection Act, as amended (29 U.S.C. 1801 *et seq.*).

(iii) *Screening and vetting host organizations.* A sponsor must adequately screen all potential host organizations at which a student intern will be placed by obtaining the following information:

(A) The Dun & Bradstreet identification number (unless the host organization is an academic institution, government entity, or family farm);

(B) Employer Identification Number (EIN) used for tax purposes;

(C) Verification of telephone number, address, and professional activities via advertising, brochures, Web site, and/or feedback from prior participants; and

(D) Verification of Workman's Compensation Insurance Policy.

(iv) *Site Visits.* A sponsor must conduct a site visit of any host organization that has not previously participated successfully in the sponsor's student internship program, has fewer than 25 employees, or has less than three million dollars in annual revenue. Any placement at an academic institution or at a Federal, State, or local government office is specifically excluded from this requirement. The purpose of the site visit is for the sponsor to ensure that each host organization possesses and maintains the ability and resources to provide structured and guided work-based learning experiences according to individualized T/IPPs, and that each host organization understands and meets its obligations set forth in this Part.

(4) *Use of third parties.* A sponsor may engage a third party (including, but not limited to a host organization, partner, local business, governmental entity, academic institution, or any other foreign or domestic agent) to assist it in the conduct of its designated student internship program. Such a third party must have an executed written agreement with the sponsor to act on behalf of the sponsor in the conduct of the sponsor's program. This agreement must outline the full relationship between the sponsor and third party on all matters involving the administration of its exchange visitor program. A sponsor's use of a third party does not relieve the sponsor of its obligations to comply with and to ensure third party compliance with Exchange Visitor Program regulations. Any failure by any third party to comply with the regulations set forth in this Part or with any additional terms and conditions governing Exchange Visitor Program administration that the Department may from time to time impose will be imputed to the sponsor.

(5) *Evaluation requirements.* In order to ensure the quality of a student internship program, a sponsor must develop procedures for evaluating all student interns. All required evaluations must be completed prior to the conclusion of a student internship program, and the student intern and his or her immediate supervisor must sign the evaluation forms. At a minimum, all programs require a concluding evaluation, and programs lasting longer than six months also require a midpoint evaluation. For programs exceeding six months' duration, at a minimum, midpoint and concluding evaluations are required. A sponsor must retain student intern evaluations (electronic or hard copy) for a period of at least three years following the completion of each student internship program.

(6) *Employment, wages, or remuneration.* A student intern is permitted to engage in full-time employment during the student internship program as outlined on his or her T/IPP, with or without wages or other compensation. Employment is not required for participation in the program. A student intern may be employed, however, only with the approval of the responsible officer and the student's home institution's dean or academic advisor.

(7) *Training/Internship Placement Plan (Form DS–7002).* (i) A sponsor must fully complete and obtain requisite signatures for a Form DS–7002 for each student intern before issuing a Form DS–2019. A sponsor must provide to each signatory an executed copy of the Form DS–7002. Upon request, a student intern must present his or her fully executed Form DS–7002 to a Consular Official during the visa interview.

(ii) To further distinguish between work-based learning for student interns, which is permitted, and ordinary employment or unskilled labor which is not, a T/IPP must:

(A) State the specific goals and objectives of the student internship program (for each phase or component, if applicable);

(B) Detail the knowledge, skills, or techniques to be imparted to the student intern (for each phase or component, if applicable); and

(C) Describe the methods of performance evaluation and the frequency of supervision (for each phase or component, if applicable).

(8) *Program exclusions.* A sponsor designated by the Department to administer a student internship program must:

(i) Not place a student intern in an unskilled or casual labor position, in a position that requires or involves child care or elder care, a position in the field of aviation, or, in clinical positions or engaging in any other kind of work that involves patient care or contact, including any work that would require student interns to provide therapy, medication, or other clinical or medical care (*e.g.*, sports or physical therapy, psychological counseling, nursing, dentistry, veterinary medicine, social work, speech therapy, or early childhood education);

(ii) Not place a student intern in a position, occupation, or business that could bring the Exchange Visitor Program or the Department into notoriety or disrepute;

(iii) Not engage or otherwise cooperate or contract with a staffing/employment agency to recruit, screen, orient, place, evaluate, or train student interns, or in any other way involve such agencies in an Exchange Visitor Program student internship program;

(iv) Ensure that the duties of a student intern as outlined in the T/IPP will not involve more than 20 per cent clerical work, and that all tasks assigned to a student intern are necessary for the completion of the student internship program; and

(v) Ensure that all ''Hospitality and Tourism'' student internship programs of six months or longer contain at least three departmental or functional rotations.

Dated: June 7, 2008.

**Stanley S. Colvin,**

*Director, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. E8–13799 Filed 6–19–08; 8:45 am]

**BILLING CODE 4710–05–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 35

### State and Local Assistance

*CFR Correction*

In title 40 of the Code of Federal Regulations, parts 1 to 49, revised as of July 1, 2007, on page 540, in § 35.939, in paragraph (g)(2)(ii), remove the remainder of the paragraph following ''in good faith.'', and reinstate paragraphs (h) through (l) to read as follows:

**§ 35.939 Protests.**

* * * * *

(h) *Deferral of procurement action.* Upon receipt of a protest under paragraph (d) of this section, the grantee must defer the protested procurement action (for example, defer the issuance of solicitations, contract award, or issuance of notice to proceed under a contract) until 10 days after delivery of its determination to the participating parties. (The grantee may receive or open bids at it own risk, if it considers this to be in its best interest; and see § 35.938–4(h)(5).) Where the Regional Administrator has received a written protest under paragraph (e) of this section, he must notify the grantee promptly to defer its protested procurement action until notified of the formal or informal resolution of the protest.

(i) *Enforcement.* (1) Noncompliance with the procurement provisions of this subchapter by the grantee shall be cause for enforcement action in accordance with one or more of the provisions of § 35.965 of this subpart.

(2) If the Regional Administrator determines that a protest prosecuted pursuant to this section is frivolous, he may determine the party which prosecuted such protest to be nonresponsible and ineligible for future contract award (see also paragraph (k) of this section).

(j) *Limitation.* A protest may not be filed under this section with respect to the following:

(1) Issues not arising under the procurement provisions of this subchapter; or

(2) Issues relating to the selection of a consulting engineer, provided that a protest may be filed only with respect to the mandatory procedural requirements of §§ 35.937 through 35.937–9;

(3) Issues primarily determined by State or local law or ordinances and as to which the Regional Administrator, upon review, determines that there is no contravening Federal requirement and that the grantee's action has a rational basis (see paragraph (e)(4) of this section).

(4) Provisions of Federal regulations applicable to direct Federal contracts, unless such provisions are explicitly referred to or incorporated in this subpart;

(5) Basic project design determinations (for example, the selection of incineration versus other methods of disposal of sludge);

(6) Award of subcontracts or issuance of purchase orders under a formally advertised, competitively bid, lump-sum construction contract. However, protest may be made with respect to alleged violation of the following:

(i) Specification requirements of § 35.936–13; or

(ii) Provisions of this subpart applicable to the procurement procedures, negotiation or award of subcontracts or issuance of purchase orders under §§ 35.937–12 (subcontracts under subagreements for architectural or engineering services) or § 35.938–9 (subcontracts under construction contracts).

(k) *Summary disposition.* The Regional Administrator may summarily dismiss a protest, without proceedings under paragraph (d) or (e) of this section, if he determines that the protest is untimely, frivolous or without merit—for example, that the protested action of the grantee primarily involves issues of State or local law. Any such determination shall refer briefly to the facts substantiating the basis for the determination.

(l) *Index.* The EPA General Counsel will publish periodically as a notice document in the Federal Register an index of Regional Administrator protest determinations. (See, e.g., 43 FR 29085, July 5, 1978.)

[FR Doc. E8–14037 Filed 6–19–08; 8:45 am]

**BILLING CODE 1505–01–D**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R07–OAR–2008–0342; FRL–8581–7]**

### Approval and Promulgation of Implementation Plans; State of Missouri

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve Missouri's request to revise the State Implementation Plan

(SIP). This approval will revise the SIP to include changes to the sulfur dioxide ($SO_2$) emissions rates and averaging times for Kansas City Power & Light's Hawthorn Plant and Montrose Station in the rule, Restriction of Emission of Sulfur Compounds. Previous changes to this rule were disapproved in 2006 because EPA was concerned that the averaging times for the rates at these units had been dramatically increased from a 3-hour average to an annual average, and that the revised averaging times were not demonstrated by the state to be protective of the short-term (3- and 24-hour) $SO_2$ National Ambient Air Quality Standard (NAAQS). EPA believes that the recent changes, which EPA is now approving, have been shown by Missouri to be protective of the short-term $SO_2$ NAAQS. This revision will ensure consistency between the state and the Federally-approved rules.

**DATES:** This direct final rule will be effective August 19, 2008, without further notice, unless EPA receives adverse comment by July 21, 2008. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R07–OAR–2008–0342, by one of the following methods:

1. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

2. *E-mail: algoe-eakin.amy@epa.gov*.

3. *Mail:* Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier.* Deliver your comments to Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

*Instructions:* Direct your comments to Docket ID No. EPA–R07–OAR–2008–0342. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Amy Algoe-Eakin at (913) 551–7942 or by e-mail at *algoe-eakin.amy@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is the background of this action?
What is being addressed in this document?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

**What is a SIP?**

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

**What is the Federal approval process for a SIP?**

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

**What does Federal approval of a state regulation mean to me?**

Enforcement of the state regulation before and after it is incorporated into

the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

**What is the background of this action?**

In 2006, EPA disapproved Missouri's request to amend the SIP to include revisions to the Restriction of Emission of Sulfur Compounds rule relating to a change in emissions rates and averaging times for the Kansas City Power & Light (KCP&L) Hawthorn Plant and Montrose Station. EPA was concerned that, although the emissions rates were decreased, the averaging times for the rates at these units had been dramatically increased from a 3-hour average to an annual average and that the state had not shown that the revised averaging times were protective of the short-term $SO_2$ NAAQS. (*See,* 71 FR 12623, March 13, 2006.)

Since 2006, the Missouri Department of Natural Resources has revised Table 1 in the Restriction of Emission of Sulfur Compounds rule to change the averaging times for the emissions rates at the Hawthorn Plant and Montrose Station. For the Hawthorn Plant, Table 1 reflects the averaging time and emission rate consistent with the Prevention of Significant Deterioration (PSD) permit issued for Unit 5A in 1999. This emissions limit had been determined to be adequate to protect the $SO_2$ NAAQS. For the Montrose Station unit, modeling (using the AERMOD model) was conducted to determine an emission rate which would be protective of the short term $SO_2$ NAAQS. Modeling results indicate that the emission rate should not exceed 3.9 lbs/MMBTU, on a 24-hour average, in order to avoid exceeding the 3-hour and 24-hour $SO_2$ NAAQS. The state has adequately demonstrated that this emissions limit for the Montrose Station is protective of the NAAQS.

**What is being addressed in this document?**

EPA is approving a revision to Missouri's SIP to include revisions to Table 1 of Missouri rule, 10 CSR 10–6.260 Restriction of Emission of Sulfur Compounds. Missouri has demonstrated that the revisions in Table 1 for KCP&L's Hawthorn Plant and for KCP&L's Montrose Station are protective of the 3-hour and 24-hour $SO_2$ NAAQS.

**Have the requirements for approval of a SIP revision been met?**

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

**What action is EPA taking?**

EPA is taking final action to approve Missouri's request to revise the SIP as submitted on March 28, 2008. We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

**Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 19, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead,

Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 9, 2008.

**John B. Askew,**

*Regional Administrator, Region 7.*

■ 40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart AA—Missouri

■ 2. In § 52.1320 the table in paragraph (c) is amended under Chapter 6 by revising the entry for 10–6.260 to read as follows:

**§ 52.1320 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

| Missouri citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| **Missouri Department of Natural Resources** | | | | |
| * * * * * * * | | | | |
| **Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri** | | | | |
| * * * * * * * | | | | |
| 10–6.260 | Restriction of Emission of Sulfur Compounds. | 2/29/08 | 6/20/08 [*insert FR page number where the document begins*]. | Section (3)(B) is not SIP approved. |
| * * * * * * * | | | | |

* * * * *

[FR Doc. E8–13838 Filed 6–19–08; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R07–OAR–2008–0392; FRL–8581–9]**

## Approval and Promulgation of Implementation Plans; State of Missouri

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the state of Missouri to amend the Missouri SIP to include revisions to the Kansas City Solvent Metal Cleaning rule. The revisions to this rule include consolidating exemptions in the applicability section, adding new exemptions, adding definitions of new and previously undefined terms, and clarifying rule language regarding operating procedure requirements for spray gun cleaners and air-tight and airless cleaning systems. This revision will ensure consistency between the state and the Federally-approved rules.

**DATES:** This direct final rule will be effective August 19, 2008, without further notice, unless EPA receives adverse comment by July 21, 2008. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

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*Instructions:* Direct your comments to Docket ID No. EPA–R07–OAR–2008–0392. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Amy Algoe-Eakin at (913) 551–7942, or by e-mail at *algoe-eakin.amy@epa.gov.*

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**What is a SIP?**

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the federally-enforceable SIP.

Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

**What is the Federal approval process for a SIP?**

In order for state regulations to be incorporated into the federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

**What does Federal approval of a state regulation mean to me?**

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

**What is being addressed in this document?**

On March 21, 2008, Missouri requested that EPA approve a revision to the SIP to include changes to Missouri rule 10 CSR 10–2.210, Control of Emissions From Solvent Metal Cleaning. This rule specifies equipment, operating procedures, and training requirements for the reduction of volatile organic compound (VOC) emissions from solvent metal cleaning operations in the Kansas City, Missouri, metropolitan area. Generally, the revisions to this rule include: (1) Consolidating exemptions in the applicability section, (2) adding new exemptions, (3) adding definitions of new and previously undefined terms, and (4) clarifying rule language regarding operating procedure requirements for spray gun cleaners and air-tight and airless cleaning systems.

This rule was included in the reasonably available control technology (RACT) measures for the Kansas City area approved by EPA in the **Federal Register** on April 9, 1980, and effective the same date. The RACT rules were put into place to meet the nonattainment area (Part D) requirements of the CAA, and to help attain the National Ambient Air Quality Standards for ozone in the Kansas City area.

The revisions to the applicability section include revisions to subsection (1)(C), which describes the processes which use nonaqueous solvents to clean and remove soils from metal parts which are subject to this rule, and subsection (1)(D), which lists the solvents which are exempt from this rule. Subsection (1)(D) consolidates existing exemptions into one section and adds three new exemptions. The first new exemption is the exemption of solvent metal cleaning operations which are regulated under 40 CFR Part 63, Subpart T, the National Emission Standard for Hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaning which Missouri has incorporated by reference in 10 CSR 10–2.210. The Missouri Department of Natural Resources' Air Pollution Control Program (MDNR/APCP) states that the solvents used in this practice are required to comply with the NESHAP for Halogenated Solvent Cleaning and states that in general the NESHAP for Halogenated Solvent Cleaning work practices, solvent loss limits, equipment specifications, and solvent recordkeeping/reporting requirements exceed the requirements in the existing Missouri solvent metal cleaning rule. Based on review of Missouri's analysis, we believe Missouri can exempt this source category from the RACT rule because the NESHAP incorporated into 10 CSR 10–2.210 is at least as stringent, and sources must comply with this NESHAP in order to qualify for exemption from the Missouri RACT rule.

The second and third new exemptions added were for flush cleaning operations and hand cleaning/wiping operations. These exemptions were also added because industry conducting these activities are already regulated by Federal standards in 40 CFR Part 63, Subpart GG, the NESHAP for Aerospace Manufacturing and Rework Facilities and by Missouri Rule 10 CSR 10–2.215, Control of Emissions From Solvent Cleanup Operations. Based on the review of the analyses provided by the state to justify the rule, we believe that revision of this rule to exempt these source categories because the NESHAP which has also been adopted by

Missouri in 10 CSR 10–6.075 and existing state rule, 10 CSR 10–2.215, are at least as stringent and sources must comply with both state rules in order to be exempt from the RACT rule.

The MDNR/APCP also added several new definitions. These definitions include: (2)(E) Flush cleaning, (2)(I) hand cleaning/wiping operation, (2)(J) institutional cleaning, (2)(K) janitorial cleaning, (2)(M) nonaqueous solvent, (2)(N) optical device, (2)(O) soils, and (2)(P) spray gun cleaner. These definitions were added to provide clarity to the rule, and Missouri has provided an analysis showing that this revision will not cause an increase in emissions.

The MDNR/APCP also reorganized the General Provisions section. Specifically subsection (3)(A) of the rule was reorganized into subparagraphs for cold cleaners, open-top vapor degreasers, conveyorized degreasers, and air-tight or airless cleaning systems. Subsection (3)(B) outlines operating procedures for the four operations mentioned above. The spray gun cleaner, subparagraph (3)(B)4., and the air-tight and airless cleaning systems, subparagraph (3)(B)5., were added to provide more clarity to the rule's application for these two operations. Subsection (3)(C) was revised to add clarifying language to the operator and supervisor training portion of this rule, and subsection (4)(A), reporting and record keeping language, was revised to require the records to be kept current and made available for review on a monthly basis.

Missouri has prepared documentation which demonstrates that these rule revisions will not negatively impact air quality in the Kansas City area. The demonstration consists of (1) an explanation of the rationale for the revisions to the rule's format, and (2) an evaluation of the revisions to the applicability section, definitions section, general provisions section, the reporting and record keeping section, and test methods section. The reformatting of the rule makes this rule consistent with the general format of Missouri air rules.

The rule reformatting does not change any requirements and, therefore, does not impact emissions. As explained above, the additional exemptions in the rule do not significantly change the emissions limits to which the affected sources are subject. In addition, these rules, as revised, continue to require emissions reductions previously determined by EPA to represent RACT.

**Have the requirements for approval of a SIP revision been met?**

The submittal satisfied the completeness criteria of 40 CFR Part 51, Appendix V. In addition, the state submittal has met the public notice requirements for SIP submission in accordance with 40 CFR 51.102 and met the substantive SIP requirements of the CAA including section 110.

**What action is EPA taking?**

We are approving the request to amend the Missouri SIP to include revisions to the Kansas City solvent metal cleaning rule, 10 CSR 10–2.210, Control of Emissions From Solvent Metal Cleaning.

We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial and make regulatory revisions, required by state statute. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

**Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

• Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et. seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 19, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 9, 2008.

**John B. Askew,**

*Regional Administrator, Region 7.*

■ 40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et. seq.*

### Subpart AA—Missouri

■ 2. In § 52.1320(c) the table is amended under Chapter 2 by revising the entry for 10–2.210 to read as follows:

**§ 52.1320 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

| Missouri citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| **Missouri Department of Natural Resources** | | | | |
| **Chapter 2—Air Quality Standards and Air Pollution Control Regulations for the Kansas City Metropolitan Area** | | | | |
| * | * | * | * | * |
| 10–2.210 | Control of Emissions From Solvent Metal Cleaning. | 02/29/08 | 06/20/08 [*insert FR page number where the document begins*]. | |
| * | * | * | * | * |

* * * * *

[FR Doc. E8–13755 Filed 6–19–08; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Part 65

**[Docket No. FEMA–B–7788]**

### Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

**DATES:** These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Assistant Administrator of FEMA reconsider the changes. The modified BFEs may be changed during the 90-day period.

**ADDRESSES:** The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

**SUPPLEMENTARY INFORMATION:** The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by the other Federal, State, or regional entities. The changed BFEs are in accordance with 44 CFR 65.4.

*National Environmental Policy Act.* This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

*Regulatory Classification.* This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

*Executive Order 12988, Civil Justice Reform.* This interim rule meets the applicable standards of Executive Order 12988.

**List of Subjects in 44 CFR Part 65**

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

## PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

### § 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

| State and county | Location and case No. | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Alabama: | | | | | |
| Madison | City of Huntsville (08–04–1223P). | May 2, 2008; May 9, 2008; *Madison County Record*. | The Honorable Loretta Spencer, Mayor, City of Huntsville, 308 Fountain Circle, Huntsville, AL 35801. | April 29, 2008 | 010153 |
| Montgomery | Unincorporated areas of Montgomery County (07–04–6294P). | March 7, 2008; March 14, 2008; *Montgomery Advertiser*. | The Honorable Todd Strange, Chairman, Montgomery County Commission, P.O. Box 1667, Montgomery, AL 36102–1667. | July 14, 2008 | 010278 |
| Arizona: | | | | | |
| Maricopa | Unincorporated areas of Maricopa County (07–09–1830P). | April 10, 2008; April 17, 2008; *Arizona Business Gazette*. | The Honorable Andrew W. Kunasek, Chairman, Maricopa County, Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003. | April 1, 2008 | 040037 |
| Maricopa | Town of Queen Creek (07–09–1830P). | April 10, 2008; April 17, 2008; *Arizona Business Gazette*. | The Honorable Art Sanders, Mayor, Town of Queen Creek, 22350 South Ellsworth Road, Queen Creek, AZ 85242. | April 1, 2008 | 040132 |
| Mohave | City of Kingman (08–09–0713P). | May 14, 2008; May 21, 2008; *Kingman Daily Miner*. | The Honorable Lester Byram, Mayor, City of Kingman, 310 North Fourth Street, Kingman, AZ 86401. | September 18, 2008 | 040060 |
| Mohave | Unincorporated areas of Mohave County (08–09–0713P). | May 14, 2008; May 21, 2008; *Kingman Daily Miner*. | The Honorable Pete Byers, Chairman, Mohave County, Board of Supervisors 700 West Beale Street, Kingman, AZ 86401. | September 18, 2008 | 040058 |
| Pima | City of Tucson (07–09–1087P). | April 10, 2008; April 17, 2008; *Daily Territorial*. | The Honorable Bob Walkup, Mayor, City of Tucson, P.O. Box 27210, Tucson, AZ 85726. | May 4, 2008 | 040076 |
| Yavapai | Town of Prescott Valley (07–09–1850P). | May 22, 2008; May 29, 2008; *Prescott Daily Courier*. | The Honorable Harvey C. Skoog, Mayor, Town of Prescott Valley ,7501 East Civic Circle, Prescott Valley, AZ 86314. | May 9, 2008 | 040121 |
| Yavapai | Unincorporated areas of Yavapai County (07–09–1850P). | May 22, 2008; May 29, 2008; *Prescott Daily Courier*. | The Honorable Carol Springer, Chairman, Yavapai County, Board of Supervisors 1015 Fair Street, Prescott, AZ 86305. | May 9, 2008 | 040093 |
| Arkansas: Pulaski | City of North Little Rock (08–06–1262P). | May 17, 2008; May 24, 2008; *Arkansas Democrat Gazette*. | The Honorable Patrick H. Hays, Mayor, City of North Little Rock, 300 Main Street, North Little Rock, AR 72114. | May 6, 2008 | 050182 |
| California: Sacramento. | Unincorporated areas of Sacramento (08–09–0022P). | April 24, 2008; May 1, 2008; *Daily Recorder*. | The Honorable Jimmie Yee, Chairman, Sacramento County, Board of Supervisors, 700 H Street, Suite 2450, Sacramento, CA 95814. | August 29, 2008 | 060262 |
| Colorado: Douglas | Town of Castle Rock (08–08–0159P). | May 15, 2008; May 22, 2008; *Douglas County News-Press*. | The Honorable Randy Reed, Mayor, Town of Castle Rock, 100 North Wilcox Street, Castle Rock, CO 80104. | September 19, 2008 | 080050 |
| Delaware: Kent | Unincorporated areas of Kent County (08–03–0601P). | May 21, 2008; May 28, 2008; *Dover Post*. | The Honorable P. Brooks Banta, President, Kent County, 555 Bay Road, Dover, DE 19901. | September 18, 2008 | 100001 |
| Florida: Sarasota | City of Sarasota (08–04–3096P). | May 16, 2008; May 23, 2008; *Herald Tribune*. | The Honorable Lou Ann Palmer, Mayor, City of Sarasota, 1565 First Street, Room 101, Sarasota, FL 34236. | April 30, 2008 | 125150 |
| Hawaii: Maui | Unincorporated areas of Maui County (07–09–0822P). | April 3, 2008; April 10, 2008; *Maui News*. | The Honorable Charmaine Tavares, Mayor, County of Maui, 200 South High Street, Ninth Floor, Wailuku, HI 96793. | March 25, 2008 | 150003 |
| Idaho: Bonneville | Unincorporated areas of Bonneville County (08–10–0105P). | April 4, 2008; April 11, 2008; *Post Register*. | The Honorable Lee Staker, Chairman, Bonneville County, Board of Commissioners, 605 North Capital Avenue, Idaho Falls, ID 83402. | March 27, 2008 | 160027 |
| Minnesota: Sherburne. | City of Elk River (08–05–0592P). | April 16, 2008; April 23, 2008; *Star News*. | The Honorable Stephanie Klinzing, Mayor, City of Elk River, 13065 Orono Parkway, Elk River, MN 55330. | August 15, 2008 | 270436 |
| Missouri: | | | | | |
| St. Louis | Town of Huntleigh (08–07–0367P). | May 17, 2008; May 24, 2008; *The Countian*. | The Honorable Paul Von Gontard, Mayor, Town of Huntleigh, One City Center, Suite 15002845, South Lindbergh Boulevard, St. Louis, MO 63101. | September 19, 2008 | 290359 |
| St. Louis | City of Ladue (08–07–0367P). | May 17, 2008; May 24, 2008; *The Countian*. | The Honorable Irene Holmes, Mayor, City of Ladue, 9345 Clayton Road, St. Louis, MO 63124. | September 19, 2008 | 290363 |

| State and county | Location and case No. | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| New York: Rockland | Town of Clarkstown (08–02–0127P). | May 22, 2008; May 29, 2008; *Rockland County Times*. | The Honorable Alexander J. Gromack, Supervisor, Town of Clarkstown, Ten Maple Avenue, New City, NY 10956. | November 18, 2008 | 360679 |
| Ohio: Franklin | City of Columbus (07–05–1194P). | April 10, 2008; April 17, 2008; *Columbus Dispatch*. | The Honorable Michael B. Coleman, Mayor, City of Columbus, 90 West Broad Street, Columbus, OH 43215. | August 18, 2008 | 390170 |
| Ohio:. Franklin | Unincorporated areas of Franklin County (07–05–1194P). | April 10, 2008; April 17, 2008; *Columbus Dispatch*. | The Honorable Marilyn Brown, President, Franklin County, Board of Commissioners, 373 South High Street, 26th Floor, Columbus, OH 43215. | August 18, 2008 | 390167 |
| Ohio:. Warren | City of Middletown (08–05–0820P). | May 1, 2008; May 8, 2008; *Pulse-Journal*. | The Honorable Larry Mulligan, Jr., Mayor, City of Middletown, One Donham Plaza, Middletown, OH 45042. | September 5, 2008 | 390040 |
| South Carolina: Jasper. | Town of Hardeeville (08–04–3462P). | May 9, 2008; May 16, 2008; *Beaufort Gazette*. | The Honorable A. Brooks Willis, Mayor, Town of Hardeeville, 205 East Main Street, Hardeeville, SC 29927. | September 15, 2008 | 450113 |
| Tennessee: Davidson | Metropolitan Government of Nashville and Davidson County (08–04–0256P). | May 12, 2008; May 19, 2008; *The Tennessean*. | The Honorable Karl Dean, Mayor, Metropolitan Government of Nashville and Davidson County, 100 Metropolitan Courthouse, Nashville, TN 37201. | September 15, 2008 | 470040 |
| Knox | Unincorporated areas of Knox County (08–04–3041P). | May 15, 2008; May 21, 2008; *Knoxville News-Sentinel*. | The Honorable Mike Ragsdale, Mayor, Knox County, 400 Main Street, Suite 615, Knoxville, TN 37902. | April 30, 2008 | 475433 |
| Texas: Bexar | Unincorporated areas of Bexar County (08–06–0794P). | May 22, 2008; May 29, 2008; *San Antonio Express-News*. | The Honorable Nelson W. Wolff, Bexar County Judge, 100 Dolorosa Street, Suite 120, San Antonio, TX 78205. | September 19, 2008 | 480035 |
| Bexar | City of San Antonio (08–06–0040P). | May 5, 2008; May 12, 2008; *San Antonio Express-News*. | The Honorable Phil Hardberger, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283. | April 28, 2008 | 480045 |
| Hays | City of Kyle (08–06–0338P). | May 7, 2008; May 14, 2008; *Hays Free Press*. | The Honorable Miguel Gonzalez, Mayor, City of Kyle, 116 Fall Creek Drive, Kyle, TX 78640. | September 11, 2008 | 481108 |
| Montgomery | Unincorporated areas of Montgomery County (07–06–1592P). | May 14, 2008; May 21, 2008*Montgomery County News*. | The Honorable Alan B. Sadler, Montgomery County Judge, 310 North Thompson Street, Suite 210, Conroe, TX 77301. | May 30, 2008 | 480483 |
| Williamson | City of Round Rock (07–06–2411P). | May 13, 2008; May 20, 2008; *Round Rock Leader*. | The Honorable Nyle Maxwell, Mayor, City of Round Rock, 221 East Main Street, Round Rock, TX 78664. | September 17, 2008 | 481048 |
| Utah: Salt Lake | Unincorporated areas of Salt Lake County (08–08–0060P). | May 2, 2008; May 9, 2008; *Salt Lake Tribune*. | The Honorable Peter Corroon,Mayor, Salt Lake County, 2007 South State Street, Salt Lake City, UT 84190–1020. | September 8, 2008 | 490102 |
| Wisconsin: Washington. | Village of Germantown (08–05–2438P). | May 6, 2008; May 13, 2008; *West Bend Daily News*. | The Honorable Thomas Kempinski, President, Village of Germantown, W169 N11504 Biscayne Drive, Germantown, WI 53022. | September 10, 2008 | 550472 |

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: June 10, 2008.

**David I. Maurstad,**

*Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. E8–13931 Filed 6–19–08; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Part 67

### Final Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

**ADDRESSES:** The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Assistant Administrator of the Mitigation Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

*National Environmental Policy Act.* This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This final rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This final rule meets the applicable standards of Executive Order 12988.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

## PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.11 [Amended]**

■ 2. The tables published under the authority of § 67.11 are amended as follows:

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground | Communities affected |
|---|---|---|---|
| | | Modified | |
| **Huron County, Michigan, and Incorporated Areas Docket No.: FEMA–D–7806** | | | |
| Lake Huron | Entire Shoreline | +583 | City of Harbor Beach, Port Hope, Township of Gore, Township of Huron, Township of Rubicon, Township of Sand Beach, Township of Sherman, Village of Port Austin. |
| Lake Huron | Entire Shoreline | +583 | City of Harbor Beach, Port Hope, Township of Gore, Township of Huron, Township of Rubicon, Township of Sand Beach, Township of Sherman, Village of Port Austin. |
| Saginaw Bay | Entire shoreline along the Township of Caseville | +584 | Township of Caseville, Village of Caseville. |
| Saginaw Bay | Entire shoreline along the Township of Hume | +584 | Township of Hume. |
| Saginaw Bay | Entire shoreline along the Township of Lake | +584 | Township of Lake. |
| Saginaw Bay | Entire shoreline along the Township of McKinley | +584 | Township of Mckinley. |
| Saginaw Bay | Entire shoreline along the Township of Fairhaven | +585 | Township of Fairhaven. |
| Saginaw Bay | Entire shoreline along the Township of Sebewaing | +585 | Township of Sebewaing. |
| Saginaw Bay | Entire shoreline along the Township of Port Austin | +583 | Village of Port Austin, Township of Pointe Aux Barques. |
| Sebewaing River/State Drain | At the confluence with Saginaw Bay | +585 | Township of Sebewaing. |
| | At Bay Street | +593 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

**ADDRESSES**

**City of Harbor Beach**

Maps are available for inspection at 766 State Street, Harbor Beach, MI 48441.

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground | Communities affected |
|---|---|---|---|
| | | Modified | |

**Port Hope**
Maps are available for inspection at 4250 Lakeshore Drive, Port Hope, MI 48468.
**Township of Caseville**
Maps are available for inspection at 6767 Main Street, Caseville, MI 48725.
**Township of Fairhaven**
Maps are available for inspection at 9811 Main Street, Bay Port, MI 48759.
**Township of Gore**
Maps are available for inspection at 6980 Moeller Road, Port Hope, MI 48468.
**Township of Hume**
Maps are available for inspection at 1918 Oak Beach Road, Port Austin, MI 48467.
**Township of Huron**
Maps are available for inspection at 5150 Kaufman Road, Port Hope, MI 48468.
**Township of Lake**
Maps are available for inspection at 6064 Dufty Road, Caseville, MI 48725.
**Township of McKinley**
Maps are available for inspection at 2701 Sturm Road, Pigeon, MI 48755.
**Township of Pointe Aux Barques**
Maps are available for inspection at 9219 Linwood Road, Port Austin, MI 48467.
**Township of Rubicon**
Maps are available for inspection at 3195 N. Lakeshore Road, Port Hope, MI 48468.
**Township of Sand Beach**
Maps are available for inspection at 8665 Lincoln Road, Harbor Beach, MI 48441.
**Township of Sebewaing**
Maps are available for inspection at 108 W. Main, Sebewaing, MI 48759.
**Township of Sherman**
Maps are available for inspection at 4599 S. Ruth Road, Ruth, MI 48470.
**Village of Caseville**
Maps are available for inspection at 6767 Main Street, Caseville, MI 48725.
**Village of Port Austin**
Maps are available for inspection at 17 W. State Street, Port Austin, MI 48467.
**Village of Ubly**
Maps are available for inspection at 2241 Pierce Street, Ubly, MI 48475.

**McNairy County, Tennessee, and Incorporated Areas**
**Docket No.: FEMA–B–7749**

| | | | |
|---|---|---|---|
| Bank Creek | Approximately 2,870 feet downstream of Old Stage Road | +413 | Unincorporated Areas of McNairy County. |
| | Approximately 350 feet upstream of Stafford Bottoms Road | +416 | |
| Clarey Branch | Just upstream of U.S. Highway 64 | +404 | Town of Adamsville, Unincorporated Areas of McNairy County. |
| | Approximately 750 feet upstream of State Highway 224 | +405 | |
| Lick Creek | Approximately 3,700 feet downstream of Old Stage Road | +411 | Unincorporated Areas of McNairy County. |
| | Approximately 4,840 feet upstream of State Highway 224 | +415 | |
| Snake Creek | Approximately 105 feet downstream of U.S. Highway 64 | +403 | Town of Adamsville, Unincorporated Areas of McNairy County. |
| | Approximately 600 feet downstream Old Stage Road | +415 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

**ADDRESSES**

**Town of Adamsville**
Maps are available for inspection at 231 East Main Street, Adamsville, TN 38310.

**Unincorporated Areas of McNairy County**
Maps are available for inspection at 170 West Court, Selmer, TN 38375.

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground | Communities affected |
|---|---|---|---|
| | | Modified | |
| **Hanover County, Virginia, and Incorporated Areas Docket No.: FEMA–B–7760** | | | |
| Beaverdam Creek | Approximately 384 feet downstream of Old State Route 156. | *91 | Unincorporated Areas of Hanover County. |
| | Approximately 6,450 feet upstream of the Woodbridge Road. | *151 | |
| Bull Run | Approximately 1260 feet upstream of the confluence with North Anna River. | *75 | Unincorporated Areas of Hanover County. |
| | Approximately 1,344 feet upstream of the confluence with North Anna River. | *75 | |
| Crump Creek | At approximately 2800 feet downstream of River Road | *39 | Unincorporated Areas of Hanover County. |
| | Approximately at New Britton Road | *191 | |
| Lickinghole Creek | Approximately 643 feet upstream from the confluence with Stony Run. | *126 | Unincorporated Areas of Hanover County. |
| | Approximately at Design Road | *220 | |
| Little River | Approximately at State Route 688 (Doswell Road) | *95 | Unincorporated Areas of Hanover County. |
| | Approximately 7,000 feet upstream from the confluence with Locust Creek. | *218 | |
| Mechumps Creek | Approximately 3,258 feet upstream of Route 301 | *50 | Town of Ashland, Unincorporated Areas of Hanover County. |
| | Approximately at Route 1 | *211 | |
| North Anna River | Approximately 3.4 miles upstream of Route 1 | *104 | Unincorporated Areas of Hanover County. |
| | Approximately 3,015 feet upstream from Greek Bay Road | *201 | |
| Pamunkey River | Approximately 860 feet downstream of the confluence with Whitting Swamp. | *11 | Unincorporated Areas of Hanover County. |
| | Approximately at the confluence with North Anna Creek and South Anna Creek. | *60 | |
| South Anna Creek | Approximately at State Route 54 | *110 | Unincorporated Areas of Hanover County. |
| | Approximately 10,750 feet upstream of the confluence with Turkey Creek. | *214 | |
| Stony Run | Approximately 50 feet upstream of Route 682 | *131 | Town of Ashland, Unincorporated Areas of Hanover County. |
| | Approximately at Elmont Road | *220 | |
| Totopotomoy River | Approximately 2,000 feet downstream of the River Road | *28 | Unincorporated Areas of Hanover County. |
| | Approximately at Sliding Hill Road | *173 | |
| Tributary to Beaverdam Creek. | Approximately 580 feet upstream of the confluence with Beaverdam Creek. | *140 | Unincorporated Areas of Hanover County. |
| | Approximately 1,474 feet upstream of the confluence with Beaverdam Creek. | *140 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

**ADDRESSES**

**Town of Ashland**

Maps are available for inspection at 101 Thompson Street, Ashland, VA 23005.

**Unincorporated Areas of Hanover County**

Maps are available for inspection at Department of Public Works, 7497 County Complex Road, Government Administration Building H, Hanover, VA 23069.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: June 10, 2008.

**David I. Maurstad,**

*Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. E8–13930 Filed 6–19–08; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 67

## Final Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule; correction.

**SUMMARY:** On May 16, 2008, FEMA published in the **Federal Register** a final rule that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 73 FR 28352. The table provided here represents the flooding source, location of referenced elevation, modified elevation, and communities affected for Cabarrus County and Incorporated Areas. Specifically, it addresses flooding source Muddy Creek.

**FOR FURTHER INFORMATION CONTACT:** William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov*.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) publishes final determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These final BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These final elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

### Correction

In the final rule published at 73 FR 28352, in the May 16, 2008, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled ''Cabarrus County and Incorporated Areas'' addressed flooding source Muddy Creek. That table contained inaccurate information as to the location of referenced elevation, modified elevation in feet, or communities affected for these flooding sources. In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

| Flooding source(s) | Location of referenced elevation ** | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground | Communities affected |
|---|---|---|---|
| | | Modified | |
| **Cabarrus County and Incorporated Areas FEMA Docket Nos.: FEMA–B–7718, FEMA–B–7736, FEMA–D–7820, and FEMA–B–7752** | | | |
| Muddy Creek | At the confluence with Rocky River | +478 | Unincorporated Areas of Cabarrus County, Town of Midland. |
| | At the confluence of Muddy Creek Tributary 1 | +492 | |

Dated: June 10, 2008.

**David I. Maurstad,**

*Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. E8–13933 Filed 6–19–08; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 070817467–8554–02]**

**RIN 0648–XI52**

## Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Elephant Trunk Scallop Access Area to General Category Scallop Vessels

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS announces that the Elephant Trunk Scallop Access Area (ETAA) will close to general category scallop vessels until it re-opens on March 1, 2009, under current regulations. This action is based on the determination that 1,671 general category scallop trips into the ETAA are projected to be taken as of 1200 hr (noon) local time, June 18, 2008. This action is being taken to prevent the allocation of general category trips in the ETAA from being exceeded during the 2008 fishing year, in accordance with the regulations implementing Framework 18 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and the Magnuson-Stevens Fishery Conservation and Management Act.

**DATES:** The closure of the ETAA to all general category scallop vessels is effective 1200 hr local time, June 18, 2008, through February 28, 2009.

**FOR FURTHER INFORMATION CONTACT:** Don Frei, Fishery Management Specialist, (978) 281–9221, fax (978) 281–9135.

**SUPPLEMENTARY INFORMATION:** Regulations governing fishing activity in the Sea Scallop Access Areas are found at §§ 648.59 and 648.60. Regulations specifically governing general category scallop vessel operations in the ETAA are specified at § 648.59(e)(4)(ii). These regulations authorize vessels issued a valid general category scallop permit to fish in the ETAA under specific conditions, including a total of 1,671 trips that may be taken by general category vessels during the 2008 fishing year. The regulations at § 648.59(e)(4)(ii) require the ETAA to be closed to general category scallop vessels once the Northeast Regional Administrator has determined that the allowed number of trips are projected to be taken.

Based on Vessel Monitoring System (VMS) trip declarations by general category scallop vessels fishing in the ETAA, and analysis of fishing effort, a projection concluded that, given current activity levels by general category scallop vessels in the area, 1,671 trips will have been taken on June 18, 2008. Therefore, in accordance with the regulations at § 648.59(e)(4)(ii), the ETAA is closed to all general category scallop vessels as of 1200 hr local time, June 18, 2008. Any vessel that has declared into the general category ETAA fishery, complied with all trip notification and observer requirements, and crossed the VMS demarcation line on the way to the area, may complete the trip. This closure is in effect for the remainder of the 2008 scallop fishing year under current regulations. The ETAA is scheduled to re-open to scallop fishing, including trips for general category scallop vessels, on March 1, 2009, unless the schedule for scallop access areas is modified by the New England Fishery Management Council.

### Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

This action closes the ETAA to all general category scallop vessels until March 1, 2009, under current regulations. The regulations at § 648.59(e)(4)(ii) allow such action to ensure that general category scallop vessels do not take more than their allocated number of trips in the ETAA. The ETAA opened for the 2008 fishing year at 0001 hours on June 1, 2008. Data indicating the general category scallop fleet has taken all of the ETAA trips have only recently become available. To allow general category scallop vessels to continue to take trips in the ETAA during the period necessary to publish and receive comments on a proposed rule would result in vessels taking much more than the allowed number of trips in the ETAA. Excessive trips and harvest from the ETAA would result in excessive fishing effort in the ETAA, where effort controls are critical, thereby undermining conservation objectives of the FMP. Should excessive effort occur in the ETAA, future management measures would need to be more restrictive. Based on the above, under 5 U.S.C. 553(d)(3), proposed rulemaking is waived because it would be impracticable and contrary to the public interest to allow a period for public comment. Furthermore, for the same reasons, there is good cause under 5 U.S.C 553(d)(3) to waive the 30-day delayed effectiveness period for this action.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: June 17, 2008.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 08–1372 Filed 6–17–08; 3:06 pm]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 680

**[Docket No. 080129098–8743–02]**

**RIN 0648–AW45**

## Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations implementing Amendment 26 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). These regulations amend the Crab Rationalization Program. Amendment 26 amends the FMP to exempt permanently quota share issued to crew members, and the annual harvest privileges derived from that quota share, from requirements for delivery to specific processors, delivery within specific geographic regions, and participation in an arbitration system to resolve price disputes. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the FMP, and other applicable law.

**DATES:** Effective July 21, 2008.

**ADDRESSES:** Copies of Amendment 26, the Regulatory Impact Review (RIR)/ Final Regulatory Flexibility Analysis (FRFA) prepared for this action, and the Environmental Impact Statement (EIS) prepared for the Crab Rationalization Program may be obtained from the NMFS Alaska Region, P. O. Box 21668, Juneau, AK 99802 or from the Alaska Region website at *http://www.fakr.noaa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Glenn Merrill, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The king and Tanner crab fisheries in the

exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the MSA as amended by the Consolidated Appropriations Act of 2004 (Public Law 108–199, section 801). Amendments 18 and 19 to the FMP implemented the BSAI Crab Rationalization Program (Program). Regulations implementing Amendments 18 and 19 were published on March 2, 2005 (70 FR 10174), and are located at 50 CFR part 680.

**Crab Rationalization Program Overview**

Under the Program, NMFS issued four types of quota share (QS) to persons based on their qualifying harvest histories in the BSAI crab fisheries during a specific period of time defined under the Program. The first two types of QS were issued to holders of license limitation program (LLP) licenses endorsed for a crab fishery. Catcher/processor LLP license holders were issued catcher/processor vessel owner (CPO) QS based on the catch history of catcher processors using an LLP license, and catcher vessel LLP license holders were issued catcher vessel owner (CVO) QS based on the catch history of catcher vessels using an LLP license. Under the Program, 97 percent of the QS was initially issued as CVO and CPO QS. The remaining 3 percent of the QS was initially issued to vessel captains and crew as ''C shares,'' based on their harvest histories as crew members onboard crab fishing vessels. Captains and crew onboard catcher/processor vessels were issued catcher/processor crew (CPC) QS; and captains and crew onboard catcher vessels were issued catcher vessel crew (CVC) QS.

Each year, the QS issued to a person yields an amount of individual fishing quota (IFQ), which is a permit that provides an exclusive harvest privilege for a specific amount of raw crab pounds, in a specific crab fishery, in a given season. The size of each annual IFQ allocation is based on the amount of QS held by a person in relation to the total QS pool in a crab fishery. As an example, a person holding QS equal to one percent of the QS pool in a crab fishery would receive IFQ to harvest 1 percent of the annual total allowable catch (TAC) in that crab fishery. NMFS can issue the resulting IFQ to the QS holder directly, or to a crab harvesting cooperative comprised of multiple QS holders. Crab harvesting cooperatives have been used extensively by QS holders to allow them to receive a larger IFQ pool and coordinate deliveries and price negotiations among numerous vessels. Most QS holders, including CVC and CPC QS holders, have joined cooperatives in the first two years of the Program, and are likely to continue to do so because of the economic and administrative benefits of consolidating their IFQ.

The IFQ derived from CPO and CPC QS may be harvested and processed at sea and is not required to be delivered to a specific onshore processor or stationary floating crab processor, or within a specific geographic region. However, the IFQ derived from CVO QS is subject to (1) delivery requirements to a specific onshore processor or stationary floating crab processor, (2) delivery within specific geographic regions, also known as regionalization, and (3) requirements to participate in an arbitration system. The IFQ derived from CVC QS must be delivered to onshore or stationary floating crab processors, but is currently exempt from delivery requirements to specific processors, regionalization requirements, and requirements to participate in the arbitration system. However, under the existing regulations, CVC QS and the resulting IFQ will be subject to the same delivery, regionalization, and arbitration system requirements as CVO QS/IFQ after June 30, 2008.

When the Program was adopted in 2004, the Council recommended regularly scheduled reviews of the Program 18 months, three years, and five years after its implementation to assess specific issues. Beginning in February 2007, Council staff began preparation of the 18-month review. Among other issues examined during this review, Council staff provided a summary of the key issues and concerns relevant to applying delivery, regionalization, and arbitration system requirements to CVC QS/IFQ holders. Members of the public noted that applying these requirements to CVC QS/IFQ holders after June 30, 2008, would limit their ability to address logistical complications, not provide flexibility for CVC IFQ holders to deliver to alternative markets if desired, substantially increase the costs of operation, and not provide substantial additional stability to processors and communities. Based on these concerns, in April 2007, the Council tasked staff to prepare an analysis that would review the implications of permanently exempting CVC QS/IFQ from delivery, regionalization, and arbitration system requirements. The Council deliberated over the issue at subsequent meetings, and in December 2007, recommended permanently exempting CVC QS/IFQ from all three of these Program requirements.

**Notice of Availability and Proposed Rule**

NMFS published the notice of availability for Amendment 26 on March 21, 2008 (73 FR 15118), with a public comment period that closed on May 20, 2008. NMFS received no public comments on Amendment 26. The Secretary of Commerce approved Amendment 26 on June 6, 2008. NMFS published the proposed rule for this action on March 31, 2008 (73 FR 16830), with a public comment period that closed on May 15, 2008. NMFS received one public comment on the proposed rule, which is summarized and responded to below.

**Effects of the Action**

The following sections briefly describe the effects of permanently exempting CVC QS/IFQ holders from delivery, regionalization, and the arbitration system requirements. Additional discussion of the rationale and effects of this action is provided in the preamble to the proposed rule (73 FR 16830) and is not repeated here.

*Processor delivery requirements.* The Program recognizes the historic participation of processors and communities dependent on crab processing in the BSAI crab fisheries by requiring that a portion of the annual TAC be delivered to specific onshore or stationary floating crab processors. The Program established this linkage by issuing processor quota shares (PQS) to processors with historic participation in crab processing during a specific period. PQS yields individual processor quota (IPQ) on an annual basis that represents a privilege to receive a certain amount of crab harvested. Currently, 90 percent of the IFQ derived from CVO QS holders is issued as Class A IFQ. NMFS issues one pound of IPQ for each pound of Class A IFQ, creating a one-to-one correspondence between Class A IFQ and IPQ. The remaining 10 percent of the annual CVO IFQ is issued as Class B IFQ, which may be delivered to any processor and are not required to be delivered to a processor with unused IPQ.

The Council also recommended that because CVC QS was generated based on deliveries to onshore or stationary floating crab processors, it also should be issued as 90 percent Class A IFQ and 10 percent Class B IFQ. To facilitate CVC QS/IFQ holders and reduce the complex process matching of Class A IFQ to specific processors with IPQ, the Program exempted CVC IFQ from issuance as Class A/B IFQ and the

prohibitions on CVC IFQ leasing for the first three crab fishing years. This period expires on June 30, 2008 (see 50 CFR 680.41(e) and 50 CFR 680.42(b)(6) and (c)(5)), and was intended to provide CVC QS/IFQ holders time to adapt to the Program before phasing in these additional restrictions. Further, the Council recommended that the appropriateness of applying Class A and B IFQ restrictions should be reviewed 18 months after the implementation of the Program. The Council anticipated that applying these restrictions to CVC QS may not be necessary to achieve the goals of providing additional stability to the processing sector and communities and could impose additional costs and complexity on CVC QS/IFQ holders.

The RIR/FRFA prepared for this action by Council and NMFS staff indicates that the application of Class A IFQ delivery requirements to CVC IFQ would logistically complicate use of those shares (see **ADDRESSES**). Public testimony received during the Council's deliberations that led to the adoption of Amendment 26 noted concerns about the complexity of matching shares and asserted that the potential advantages to processors and communities by establishing these delivery requirements were outweighed by the additional costs that CVC QS/IFQ holders would incur. Public testimony from processors and communities with processing facilities did not dispute this assertion and supported permanently exempting CVC QS from the requirements that it be issued as Class A and B IFQ.

Permanently extending the exemption of the Class A/B IFQ delivery requirements to CVC QS/IFQ holders is not anticipated to have adverse effects on other participants given the limited number of these shares relative to CVO, CPO, and CPC QS/IFQ. This thesis is further supported by the fact that CVC QS/IFQ has been exempt from the Class A IFQ delivery requirement for the first three years of the Program and no negative effects were indicated in the RIR/FRFA prepared for this action. Public testimony provided during Council review of this issue did not indicate that there would be negative effects on processors or communities as a result of a permanent exemption from Class A/B designation for CVC IFQ.

Additionally, based on a review of recent harvest patterns provided in the RIR/FRFA prepared for this action, CVC IFQ delivery patterns seem similar to those of Class A IFQ. These patterns could change in the future so that CVC IFQ would be more likely to be delivered independently of Class A IFQ to other markets; however, given the relatively small percentage of the total landings that are assigned to CVC IFQ onboard a vessel, NMFS does not expect delivery patterns for CVC IFQ to differ from the delivery patterns currently observed. Furthermore, even if the delivery patterns of CVC IFQ were to change in the future, NMFS believes that a shift in such a relatively small amount of IFQ likely would not have an appreciable effect on overall processor operations or deliveries to specific communities.

*Regionalization.* In addition to processor share landing requirements, Class A IFQ and IPQ are subject to regional landing requirements. Those shares must be landed and processed in specified geographic regions. Those regions are described in the EIS prepared for the Program and the RIR/FRFA prepared for this action (see **ADDRESSES**). The Class A IFQ regional delivery requirements vary depending on the specific crab fishery but generally ensure that a portion of the catch is delivered within areas that have communities that are active in crab processing. For most crab fisheries, there are two regions. One region is typically considered the more remote region. The requirement to land within the more remote region provides some assurance that the small number of processors and communities historically active within that region will continue to receive catch that could otherwise be diverted to the less remote region.

If CVC IFQ were subject to a Class A/B IFQ designation, then 90 percent of the CVC IFQ would be defined as Class A IFQ and therefore subject to regionalization. Because the Program exempted CVC IFQ from a Class A/B IFQ designation through June 30, 2008, to reduce the initial complexities of matching shares and for the other reasons mentioned in the previous section, CVC IFQ also was exempted from regionalization.

Given that CVC IFQ is currently exempt from regionalization, and CVC IFQ is delivered in conjunction with CVO Class A IFQ currently, NMFS believes that permanently exempting CVC IFQ from regionalization requirements will not have any noticeable effect on the overall delivery of CVC IFQ within a given region. Permanently exempting CVC IFQ from regionalization requirements could provide opportunities to CVC IFQ holders to use additional markets that would be foreclosed if those shares were subject to regionalization.

*Arbitration System.* To aid participants in resolving price and delivery disputes that may arise among Class A IFQ and IPQ holders, the Council developed an arbitration system. Regulations at 50 CFR 680.20 require that Class A IFQ and IPQ holders join private arbitration organizations. These arbitration organizations, in turn, must enter into contracts that define the procedure for resolving price disputes. The arbitration system serves several functions to resolve price and delivery disputes, including establishing a mechanism for the orderly matching of Class A IFQ with IPQ, developing a market report and non-binding price formula to inform price negotiations, and providing a binding arbitration procedure to resolve impasses in negotiations. A more complete description of the arbitration system is provided in the RIR/FRFA prepared for this action and the EIS prepared for the Program (see **ADDRESSES**). Because the arbitration system applies only to Class A IFQ, exempting CVC IFQ from Class A/B IFQ designation effectively exempts CVC IFQ from the arbitration system.

*Summary.* This rule implements a permanent exemption to delivery, regionalization, and arbitration system requirements for CVC QS/IFQ holders. As described in greater detail in the preamble to the proposed rule (73 FR 16830) and the RIR/FRFA prepared for this action, permanently extending the exemption from delivery, regionalization, and arbitration system requirements will allow CVC QS/IFQ holders to avoid the additional costs and complexity that would result to them if these exemptions are not granted. Furthermore, providing these exemptions would not deprive processors and communities of any appreciable benefits if the delivery , regionalization, and arbitration system requirements were applied to CVC QS/IFQ.

NMFS modified the Program regulations to remove all instances that either require or refer to CVC IFQ being redesignated as Class A/B IFQ after June 30, 2008. These references occur in regulatory text at 50 CFR 680.2, 680.20, 680.21, 680.40, and 680.42.

**Response to Comments**

*Comment 1:* Cut all quotas by 50 percent this year and by l0 percent each year thereafter. The commenter notes that NMFS also permitted harvests in the Alaska herring fishery and asserts that the herring fishery adversely affects marine life.

*Response:* This final rule does not address the allocation of QS or TAC under the Program and modifying QS or TAC allocation is outside the scope of this action. This action modifies the nature of CVC IFQ. NMFS notes that the Alaska Department of Fish and Game

manages herring fisheries in State of Alaska waters. No change in the regulations has been made based on this comment.

**Changes from the Proposed Rule**

NMFS did not make any changes from the proposed rule.

**Classification**

*Consistency with the MSA and Other Laws*

The Assistant Administrator for Fisheries, NOAA, has determined that Amendment 26 is necessary for the conservation and management of the BSAI crab fisheries and that it is consistent with the MSA and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

An Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis/Social Impact Assessment was prepared for the Program that describes the management background, the purpose and need for the Program, the management alternatives, and the environmental, social, and economic impacts (see **ADDRESSES**). With this final rule, NMFS is continuing to implement the Program.

*Final Regulatory Flexibility Analysis (FRFA)*

A FRFA was prepared for this rule, as required by section 604 of the Regulatory Flexibility Act (RFA). Copies of the FRFA prepared for this final rule are available from NMFS (see **ADDRESSES**). The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS( responses to those comments, and a summary of the analyses completed to support the action. A summary of the FRFA follows.

Why Action by the Agency is Being Considered and Objectives of, and Legal Basis for, the Rule

The FRFA describes in detail the reasons why this action is being proposed, describes the objectives and legal basis for the rule, and discusses both small and non-small regulated entities to adequately characterize the fishery participants. The MSA provides the legal basis for the rule, as discussed in this preamble. The objectives of the rule are to permanently exempt CVC QS/IFQ holders from delivery, regionalization, and arbitration system requirements allowing them to avoid the additional costs and complexity that will result to them if these exemptions are not granted.

Number of Small Entities to Which the Final Rule Would Apply

For purposes of a FRFA, the Small Business Administration (SBA) has established that a business involved in fish harvesting is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and if it has combined annual gross receipts not in excess of $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

Because the SBA does not have a size criterion for businesses that are involved in both the harvesting and processing of seafood products, NMFS has in the past applied and continues to apply SBA's fish harvesting criterion for these businesses because catcher/processors are first and foremost fish harvesting businesses. Therefore, a business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish harvesting operations. NMFS currently is reviewing its small entity size classification for all catcher/processors in the United States. However, until new guidance is adopted, NMFS will continue to use the annual receipts standard for catcher/processors. NMFS plans to issue new guidance in the near future.

The FRFA contains a description and estimate of the number of small entities to which the rule would apply. The FRFA estimates that all of the 219 individuals hold CVC QS/IFQ and would be directly regulated by the proposed action. The FRFA notes that estimates of the number of small CVC QS/IFQ holders under the Program are complicated by limited share holder information, but, conservatively, the FRFA estimates that all of the individuals holding CVC QS/IFQ would be considered small entities.

Public Comments Received on the IRFA

NMFS received no public comments on the IRFA or on the economic impacts of the rule.

Projected Reporting, Recordkeeping, and Other Compliance Requirements

This rule would not change existing reporting, recordkeeping, or other compliance requirements.

Comparison of Alternatives

All the directly regulated individuals would be expected to benefit from the preferred alternative, Alternative 2 (described in this rule) relative to the status quo alternative because it relieves individuals from requirements that would increase their costs of operation. Of the two alternatives considered, status quo and this action, this action minimizes adverse economic impacts on the individuals that are directly regulated.

Although the alternatives under consideration in this action would have distributional and efficiency impacts for individual participants, such as reducing some operational costs for CVC QS/IFQ holders, in no case are these impacts in the aggregate expected to be substantial. Although neither of the alternatives has substantial negative impacts on small entities, preferred Alternative 2 minimizes the potential negative impacts that could arise under Alternative 1, the status quo alternative. Differences in efficiency that could arise are likely to affect most participants in a minor way having an overall insubstantial impact. As a consequence, neither alternative is expected to have any significant economic or socioeconomic impacts. Nevertheless, Alternative 2 is preferable because it reduces costs of operations for small entities to a limited degree.

*Small Entity Compliance Guide*

NMFS has posted a small entity compliance guide on its website at *http://www.fakr.noaa.gov/sustainablefisheries/crab/crfaq.htm* to satisfy the Small Business Regulatory Enforcement Fairness Act of 1996 requirement for a plain language guide to assist small entities in complying with this rule. Contact NMFS to request a hard copy of the guide (see **ADDRESSES**).

**List of Subjects in 50 CFR Part 680**

Alaska, Fisheries.

Dated: June 16, 2008.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 680 is amended as follows:

## PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 680 continues to read as follows:

**Authority:** 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

■ 2. In § 680.2, the definitions of ''Arbitration IFQ'', and ''Arbitration QS'' are revised to read as follows:

**§ 680.2 Definitions.**

* * * * *

*Arbitration IFQ* means:

(1) Class A catcher vessel owner (CVO) IFQ held by a person who is not a holder of PQS or IPQ and who is not affiliated with any holder of PQS or IPQ, and

(2) IFQ held by an FCMA cooperative.

*Arbitration QS* means CVO QS held by a person who is not a holder of PQS or IPQ and is not affiliated with any holder of PQS or IPQ.

* * * * *

■ 3. In § 680.20, paragraphs (a)(1), (b)(1)(i), the introductory text to paragraph (c), and paragraph (e)(7) are revised to read as follows:

**§ 680.20 Arbitration System.**

(a) * * *

(1) *Arbitration System.* All CVO QS, Arbitration IFQ, Class A IFQ holders, PQS and IPQ holders must enter the contracts as prescribed in this section that establish the Arbitration System. Certain parts of the Arbitration System are voluntary for some parties, as specified in this section. All contract provisions will be enforced by parties to those contracts.

* * * * *

(b) * * *

(1) * * *

(i) Holders of CVO QS,

* * * * *

(c) *Preseason requirements for joining an Arbitration Organization.* All holders of CVO QS, PQS, Arbitration IFQ, Class A IFQ affiliated with a PQS or IPQ holder, and IPQ must join and maintain a membership in an Arbitration Organization as specified in paragraph (d) of this section. All holders of QS, PQS, IFQ, or IPQ identified in the preceding sentence must join an Arbitration Organization at the following times:

* * * * *

(e) * * *

(7) *IFQ and IPQ issuance and selection of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s).* NMFS will not issue CVO IFQ and IPQ for a crab QS fishery until Arbitration Organizations establish by mutual agreement contracts with a Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) for that fishery and notify NMFS.

* * * * *

■ 4. In § 680.21, paragraph (a)(1)(iii)(B) is revised to read as follows:

**§ 680.21 Crab harvesting cooperatives.**

* * * * *

(a) * * *

(1) * * *

(iii) * * *

(B) Upon joining a crab harvesting cooperative for a CR fishery, NMFS will convert all of a QS holder's QS holdings for that CR fishery to crab harvesting cooperative IFQ.

* * * * *

■ 5. In § 680.40, paragraphs (b)(1)(ii), (b)(2)(i)(B), (b)(2)(ii)(C), (c)(2)(v)(J), (c)(4) introductory text, (h)(2)(i), (h)(2)(ii), and (h)(6)(ii) are revised to read as follows:

**§ 680.40 Quota Share (QS), Processor QS (PQS), Individual Fishing Quota (IFQ), and Individual Processor Quota (IPQ) issuance.**

* * * * *

(b) * * *

(1) * * *

(ii) *Catcher Vessel Crew (CVC) QS* shall be initially issued to qualified persons defined in paragraph (b)(3) of this section based on legal landings of unprocessed crab.

* * * * *

(2) * * *

(i) * * *

(B) *South QS* if the legal landings that gave rise to the QS for a crab QS fishery were not landed in the North Region, and all CVO QS allocated to the WAI crab QS fishery; or

* * * * *

(ii) * * *

(C) CVC QS;

* * * * *

(c) * * *

(2) * * *

(v) * * *

(J) The percentage calculated in paragraph (c)(2)(v)(I) of this section may be adjusted according to the provisions at paragraphs (c)(3) and (c)(4) of this section. The amount calculated in paragraph (c)(2)(v)(H) of this section is multiplied by the percentage for each region. These regional QS designations do not apply to CVC QS.

* * * * *

(4) *Regional designation of Western Aleutian Islands golden king crab.* Fifty percent of the CVO QS that is issued in the WAG crab QS fishery will be initially issued with a West regional designation. The West regional designation applies to QS for delivery west of 174° W. longitude. The remaining 50 percent of the CVO QS initially issued for this fishery is not subject to regional designation (Undesignated QS). A person (p) who would receive QS based on the legal landings in only one region will receive QS with only that regional designation. A person who would receive QS with more than one regional designation for that crab QS fishery would have his or her QS holdings regionally adjusted on a pro rata basis as follows:

* * * * *

(h) * * *

(2) * * *

(i) QS shall yield Class A or Class B IFQ if:

(A) Initially assigned to the CVO QS sector; or

(B) Transferred to the CVO QS sector from the CPO QS sector.

(ii) The Class A/B IFQ TAC is the portion of the TAC assigned as Class A/B IFQ under paragraphs (h)(2)(i)(A) and (B) of this section.

* * * * *

(6) * * *

(ii) CVC IFQ is not subject to regional designation.

* * * * *

■ 6. In § 680.42, paragraph (b)(6) is revised to read as follows:

**§ 680.42 Limitations on use of QS, PQS, IFQ, and IPQ.**

* * * * *

(b) * * *

(6) Any person harvesting crab under a Class B IFQ, CPO IFQ, CVC IFQ, or CPC IFQ permit may deliver that crab to any RCR.

* * * * *

[FR Doc. E8–14012 Filed 6–19–08; 8:45 am]

**BILLING CODE 3510–22–S**

# Proposed Rules

Federal Register
Vol. 73, No. 120
Friday, June 20, 2008

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0644; Directorate Identifier 2007–NM–321–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. The existing AD currently requires repetitive tests for free movement of the capsule/bearing of the nose landing gear (NLG), and related investigative and corrective actions. This proposed AD would require a modified test for free movement of the capsule/bearing of the NLG at reduced repeat intervals, and replacement of the NLG assembly with a modified assembly. This proposed AD results from additional reports of the NLG failing to extend fully on an airplane that had been inspected in accordance with AD 2004–14–07. We are proposing this AD to prevent failure of the NLG to extend fully, which could result in reduced controllability of the airplane during landing.

**DATES:** We must receive comments on this proposed AD by July 21, 2008.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal*: Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0644; Directorate Identifier 2007–NM–321–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

### Discussion

On June 29, 2004, we issued AD 2004–14–07, amendment 39–13716 (69 FR 41413, July 9, 2004), for all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. That AD requires a test for free movement of the capsule/bearing of the nose landing gear (NLG), and related investigative, significant, and corrective actions. That AD resulted from incidents in which the NLG did not fully extend, necessitating an emergency landing. We issued that AD to prevent failure of the NLG to extend fully, which could result in reduced controllability of the airplane during landing.

### Actions Since Existing AD Was Issued

Since we issued AD 2004–14–07, we have received additional reports of the NLG failing to extend fully on an airplane that had been inspected in accordance with AD 2004–14–07. Initial investigations suggest that high levels of friction can develop in the upper and lower sliding bearings, causing the shortening mechanism capsule of the NLG to bind, which prevents the NLG from extending fully. The high friction is caused by dirt contamination of the grease, along with wear in the composite material bearings. The manufacturer of the NLG has developed a NLG assembly that incorporates new aluminum bearings that have improved corrosion protection, and a new lubrication fitting between the bearings that allows clean grease to be applied without the need to remove the capsule exposing it to contamination.

### Relevant Service Information

BAE Systems (Operations) Limited has issued Service Bulletin J41–A32–082, Revision 3, dated March 30, 2007. (We referred to Revision 1, dated February 20, 2004, of BAE Systems (Operations) Limited Alert Service Bulletin J41–A32–082 in AD 2004–14–07 as the applicable source of service information for doing the actions required in that AD.) The procedures described in this service bulletin are essentially the same as those described in Revision 1; however, Revision 3 also describes procedures for cleaning and re-lubricating the NLG shortening mechanism capsule. In addition, Revision 3 also specifies reporting any failures to the manufacturer. BAE Systems (Operations) Limited Service

Bulletin J41–A32–082, Revision 3, refers to APPH Service Bulletin AIR83586–32–22, Revision 3, dated December 2006, as an additional source of service information for doing the actions specified in BAE Systems (Operations) Limited Service Bulletin J41–A32–082.

BAE Systems (Operations) Limited has also issued Service Bulletin J41–32–084, dated November 30, 2005. The service bulletin describes procedures for installing a modified NLG assembly, which has new aluminum bearings with improved corrosion protection, and a new lubrication fitting between the bearings to allow clean grease to be applied without the need to remove the capsule. In addition, the service bulletin specifies inspecting the free movement of the NLG capsule in accordance with BAE Systems (Operations) Limited Service Bulletin J41–A32–082. BAE Systems (Operations) Limited Service Bulletin J41–32–084 refers to APPH Service Bulletin AIR83586–32–25, dated October 2005, as an additional source of service information for doing the actions specified in BAE Systems (Operations) Limited Service Bulletin J41–32–084.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, mandated the service information and issued European airworthiness directive 2006–0131, dated May 18, 2006, to ensure the continued airworthiness of these airplanes in Europe.

**Explanation of British Airworthiness Authority**

Paragraph (a)(4) of the existing AD (paragraph (f)(4) of this NPRM) specifies making repairs using a method approved by either the FAA or the Civil Aviation Authority (CAA) (or its delegated agent). The EASA has assumed responsibility for the airplane model subject to this AD. Therefore, we have revised paragraph (f)(4) of this NPRM to specify making repairs using a method approved by the FAA, the CAA (or its delegated agent), or the EASA (or its delegated agent).

**FAA's Determination and Requirements of the Proposed AD**

These airplanes are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, EASA has kept the FAA informed of the situation described above. We have examined EASA's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

This proposed AD would supersede AD 2004–14–07 and would retain the requirements of the existing AD. This proposed AD would also require accomplishing the actions specified in the service information described previously.

**Change to Existing AD**

This proposed AD would retain the requirements of AD 2004–14–07. Since AD 2004–14–07 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

| Requirement in AD 2004–14–07 | Corresponding requirement in this proposed AD |
|---|---|
| paragraph (a) ..... | paragraph (f). |
| paragraph (b) ..... | paragraph (g). |
| paragraph (c) ..... | paragraph (h). |
| paragraph (d) ..... | paragraph (l) |

**Costs of Compliance**

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|---|
| Testing for free movement of the NLG capsule/bearing (required by AD 2004–14–07). | 6 | $80 | $0 | $480, per cleaning, lubrication, and inspection cycle. | 7 | $3,360, per cleaning, lubrication, and inspection cycle. |
| Cleaning, lubrication, and inspecting for free movement of the NLG capsule/bearing (new proposed action). | 6 | 80 | 10 | $490, per cleaning, lubrication, and inspection cycle. | 7 | $3,430, per cleaning, lubrication, and inspection cycle |
| NLG assembly replacement | 6 | 80 | 3,100 | $3,580 ..... | 7 | $25,060. |

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13716 (69 FR 41413, July 9, 2004) and adding the following new airworthiness directive (AD):

**BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft):** Docket No. FAA–2008–0644; Directorate Identifier 2007–NM–321–AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by July 21, 2008.

**Affected ADs**

(b) This AD supersedes AD 2004–14–07.

**Applicability**

(c) This AD applies to all BAE Systems (Operations) Limited Model Jetstream 4101 airplanes, certificated in any category.

**Unsafe Condition**

(d) This AD results from additional reports of the NLG failing to extend fully on an airplane that had been inspected in accordance with AD 2004–14–07. We are issuing this AD to prevent failure of the NLG to extend fully, which could result in reduced controllability of the airplane during landing.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Restatement of the Requirements of AD 2004–14–07**

**Service Bulletin Reference and Clarifications**

(f) The term ''service bulletin,'' as used in this AD, means BAE Systems (Operations) Limited Alert Service Bulletin J41–A32–082, Revision 1, dated February 20, 2004; and the Accomplishment Instructions and the flow chart provided in paragraph 1.N. of BAE Systems (Operations) Limited Service Bulletin J41–A32–082, Revision 3, dated March 30, 2007. After the effective date of this AD, only Revision 3 of the service bulletin may be used.

(1) The term ''flow chart,'' as used in this AD, means the flow chart following paragraph 1.M. of BAE Systems (Operations) Limited Alert Service Bulletin J41–A32–082, Revision 1; or following paragraph 1.N. of BAE Systems (Operations) Limited Service Bulletin J41–A32–082, Revision 3.

(2) BAE Systems (Operations) Limited Alert Service Bulletin J41–A32–082, Revision 1, refers to APPH Service Bulletin AIR83586–32–22, Revision 1, dated February 2004, as an additional source of service information for accomplishing the actions in the BAE Systems (Operations) Limited service bulletin. BAE Systems (Operations) Limited Alert Service Bulletin J41–J32–082, Revision 3, refers to APPH Service Bulletin AIR83586–32–22, Revision 3, dated December 2006, as an additional source of service information for accomplishing the actions in the BAE Systems (Operations) Limited service bulletin.

(3) Actions accomplished before the effective date of this AD per the Accomplishment Instructions of BAE Systems (Operations) Limited Alert Service Bulletin J41–A32–082, dated February 11, 2004; Revision 1, dated February 20, 2004; or Revision 2, dated November 25, 2005; are considered acceptable for the corresponding actions required by this AD. (The original issue of BAE Systems (Operations) Limited Alert Service Bulletin J41–A32–082 refers to the original issue of APPH Service Bulletin AIR83586–32–22, dated February 2004, as an additional source of service information for accomplishing the actions in the BAE Systems (Operations) Limited service bulletin.)

(4) Where BAE Systems (Operations) Limited Alert Service Bulletin J41–A32–082, Revision 1; BAE Systems (Operations) Limited Alert Service Bulletin J41–A32–082, Revision 3; and APPH Service Bulletin AIR83586–32–22, Revision 1; specify to contact BAE Systems or APPH for repair instructions: Before further flight, repair per a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; the Civil Aviation Authority (CAA) (or its delegated agent); or EASA (or its delegated agent).

(5) Where the flow chart in BAE Systems (Operations) Limited Alert Service Bulletin J41–A32–082, Revision 1; or BAE Systems (Operations) Limited Alert Service Bulletin J41–A32–082, Revision 3; specifies ''flying hours,'' for the purposes of this AD, this means ''flight hours.''

(6) Where BAE Systems (Operations) Limited Alert Service Bulletin J41–A32–082, Revision 1; or BAE Systems (Operations) Limited Alert Service Bulletin J41–A32–082, Revision 3; specifies to complete a reporting form and return it to the manufacturer, this AD does not require that action.

(7) BAE Systems (Operations) Limited Alert Service Bulletin J41–A32–084, dated November 30, 2005, refers to APPH Service Bulletin AIR83586–32–25, dated October 2005, as an additional source of service information for accomplishing the actions in the BAE Systems (Operations) Limited service bulletin.

**Initial Test**

(g) Within 300 flight cycles or 30 days after August 13, 2004 (the effective date of AD 2004–14–07), whichever occurs first: Perform a test for free movement of the NLG capsule/bearing, as specified in the flow chart of the service bulletin. Do all of the actions per the Accomplishment Instructions of the service bulletin.

**Note 1:** As specified in the flow chart in the service bulletin, only the actions in paragraph 2.A. (Part 1) of the Accomplishment Instructions of APPH Service Bulletin AIR83586–32–22, Revision 1, dated February 2004, are required by paragraph (f) of this AD.

**Related Investigative, Significant, and Corrective Actions**

(h) Perform related investigative, significant, and corrective actions as specified in the flow chart of the service bulletin, at the compliance times specified in the flow chart of the service bulletin. Do all of the actions per the Accomplishment Instructions of the service bulletin, except as provided by paragraph (f)(4) of this AD. During any test, if the movement of the capsule/bearing is restricted, the applicable corrective actions must be accomplished before further flight.

**Parts Installation**

(i) As of August 13, 2004, no person may install a NLG on any airplane unless it has been inspected in accordance with the requirements of paragraphs (g) and (h) of this AD.

**New Requirements of This AD**

**Repetitive Cleanings, Lubrications, and Inspections for Free Movement of the NLG Capsule**

(j) Within 400 flight hours after the effective date of this AD, or within 800 flight hours after the last test done in accordance with paragraph (g) of this AD, whichever is later, but not exceeding 3,000 flight hours after the last test done in accordance with paragraph (g) of this AD; and before further flight after each scheduled or unscheduled NLG replacement: Clean, lubricate, and inspect for free movement of the NLG capsule/bearing in accordance with the service bulletin.

(1) For NLG capsules that have adequate free movement: At the applicable interval specified in paragraphs (j)(1)(i) and (j)(1)(ii) of this AD, repeat the cleaning, lubrication, and inspection for free movement of the NLG capsule/bearing in accordance with the service bulletin.

(i) For airplanes on which the modification specified in BAe Systems (Operations) Limited Service Bulletin J41–A32–084 (Modification JM41670), dated November 30, 2005, has not been accomplished, repeat the actions specified in paragraph (j)(1) of this AD at intervals not to exceed 800 flight hours after the last inspection done in accordance with paragraph (j) of this AD.

(ii) For airplanes on which the modification specified in BAe Systems (Operations) Limited Service Bulletin J41–A32–084 (Modification JM41670), dated November 30, 2005, has been accomplished, repeat the actions specified in paragraph (j)(1) of this AD at intervals not to exceed 3,000 flight hours after the last inspection done in accordance with paragraph (j) of this AD.

(2) For NLG capsules that do not have adequate free movement: Before further flight, replace the NLG assembly with a serviceable assembly in accordance with the service bulletin. Thereafter, repeat the actions specified in paragraph (j) of this AD at the applicable interval specified in paragraph (j)(1) of this AD.

**Replace the NLG Assembly With a Modified NLG Assembly**

(k) Within 48 months after the effective date of this AD: Replace the NLG assembly with a modified assembly, in accordance with BAE Systems (Operations) Limited Service Bulletin J41–32–084, dated November 30, 2005. Thereafter, repeat the actions specified in paragraph (j) of this AD at the applicable interval specified in paragraph (j)(1) of this AD.

**Parts Installation**

(l) As of the effective date of this AD, no person may install a NLG on any airplane unless it has been inspected in accordance with paragraph (j) of this AD.

**Alternative Methods of Compliance (AMOCs)**

(m)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

**Related Information**

(n) European Aviation Safety Agency airworthiness directive 2006–0131, dated May 18, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on June 9, 2008.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8–13919 Filed 6–19–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0645; Directorate Identifier 2007–NM–358–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 707 Airplanes and Model 720 and 720B Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all Boeing Model 707 airplanes and Model 720 and 720B series airplanes. This proposed AD would require performing an operational test of the engine fuel suction feed of the fuel system, and other related testing if necessary. This proposed AD results from a report of in-service occurrences of loss of fuel system suction feed capability, followed by total loss of pressure of the fuel feed system. We are proposing this AD to detect and correct failure of the engine fuel suction feed of the fuel system, which could result in multi-engine flameout, inability to restart the engines, and consequent forced landing of the airplane.

**DATES:** We must receive comments on this proposed AD by August 4, 2008.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6438; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0645; Directorate Identifier 2007–NM–358–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

We have received a report of in-service occurrences of loss of fuel system suction feed capability, followed by total loss of pressure of the fuel feed system. This report prompted us to review the service history of all Boeing airplane models, and we found instances of loose and leaking fuel line fittings. This condition, if not corrected, could result in multi-engine flameout, inability to restart the engines, and consequent forced landing of the airplane.

**Explanation of Relevant Service Information**

We have reviewed Boeing Alert Service Bulletin A3527, dated November 7, 2007. The service bulletin describes procedures for performing an operational test of the engine fuel suction feed of the fuel system, and other related testing if necessary. The other related testing includes doing a vacuum test on the applicable engine for leakage if an engine's N1, N2, or fuel-

flow parameters deteriorate during the test. If any leakage is found in the couplings, the o-rings should be replaced; if any leakage is found in the fuel line, the fuel line should be replaced.

**FAA's Determination and Requirements of This Proposed AD**

We are proposing this AD because we have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

**Costs of Compliance**

We estimate that this proposed AD would affect 21 airplanes of U.S. registry. We also estimate that it would take 1 work-hour per product, per test, to comply with this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $1,680, or $80 per product, per test.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866,
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new AD:

**Boeing:** Docket No. FAA–2008–0645; Directorate Identifier 2007–NM–358–AD.

**Comments Due Date**

(a) We must receive comments by August 4, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to all Boeing Model 707–100 long body, –200, –100B long body, and –100B short body series airplanes; and Model 707–300, –300B, –300C, and –400 series airplanes; and Model 720 and 720B series airplanes; certificated in any category.

**Unsafe Condition**

(d) This AD results from a report of in-service occurrences of loss of fuel system suction feed capability, followed by total loss of pressure of the fuel feed system. We are issuing this AD to detect and correct failure of the engine fuel suction feed of the fuel system, which could result in multi-engine flameout, inability to restart the engines, and consequent forced landing of the airplane.

**Compliance**

(e) Comply with this AD within the compliance times specified, unless already done.

**Operational Test/Other Specified Actions**

(f) Within 18 months after the effective date of this AD, perform an operational test of the engine fuel suction feed of the fuel system, and perform all other related testing, as applicable, before further flight, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin A3527, dated November 7, 2007. Repeat the operational test thereafter at intervals not to exceed 6,000 flight hours.

**Alternative Methods of Compliance (AMOCs)**

(g)(1) The Manager, Seattle ACO, FAA, ATTN: Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6438; fax (425) 917–6590, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington on June 9, 2008.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8–13925 Filed 6–19–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0646; Directorate Identifier 2007–NM–359–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 727 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Boeing Model 727 airplanes. This proposed AD would require performing an operational test of the engine fuel suction feed of the fuel system, and other related testing if necessary. This proposed AD results from a report of in-service occurrences of loss of fuel system suction feed capability, followed by total loss of pressure of the fuel feed system. We are proposing this AD to detect and correct failure of the engine fuel suction feed of the fuel system, which could result in multi-engine flameout, inability to restart the engines, and consequent forced landing of the airplane.

**DATES:** We must receive comments on this proposed AD by August 4, 2008.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6438; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0646; Directorate Identifier 2007–NM–359–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

We have received a report of in-service occurrences of loss of fuel system suction feed capability, followed by total loss of pressure of the fuel feed system. This report prompted us to review the service history of all Boeing airplane models, and we found instances of loose and leaking fuel line fittings. This condition, if not corrected, could result in multi-engine flameout, inability to restart the engines, and consequent forced landing of the airplane.

**Explanation of Relevant Service Information**

We have reviewed Boeing Service Bulletin 727–28–80, dated June 21, 1985. The service bulletin describes procedures for performing an operational test of the engine fuel suction feed of the fuel system, and other related testing if necessary. The other related testing includes doing a vacuum test on the applicable engine for leakage if an engine's N1, N2, or fuel-flow parameters deteriorate during the test. If any leakage is found the corrective actions include inspecting and repairing or replacing any leaking Gamah fittings with new fittings, and inspecting and repairing any major welded tube assemblies that are leaking.

**FAA's Determination and Requirements of This Proposed AD**

We are proposing this AD because we have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and Service Information.''

**Differences Between the Proposed AD and Service Information**

The service bulletin recommends accomplishing the initial operational test ''at the next regularly scheduled C-check following accumulation of 20,000 total flight hours or seven years age,'' we have determined that this imprecise compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modifications. In light of all of these factors, we find a compliance time of 7,000 flight hours for completing the required actions to be warranted, in that it represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with Boeing.

Part II of the Accomplishment Instructions of the service bulletin specifies that operators may accomplish the other specified actions (a vacuum test of the fuel feed system) using an operator's equivalent procedure (with substitute test equipment). However, this proposed AD would require operators to accomplish the actions using the procedures specified in Figure 4 of the service bulletin. An ''operator's equivalent procedure'' may be used only if approved as an alternative method of compliance according to paragraph (h) of this AD.

**Costs of Compliance**

We estimate that this proposed AD would affect 709 airplanes of U.S. registry. We also estimate that it would take 1 work-hour per product, per test, to comply with this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $56,720, or $80 per product, per test.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We determined that this proposed AD would not have federalism implications

under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866,

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new AD:

**Boeing:** Docket No. FAA–2008–0646; Directorate Identifier 2007–NM–359–AD.

**Comments Due Date**

(a) We must receive comments by August 4, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, certificated in any category.

**Unsafe Condition**

(d) This AD results from a report of in-service occurrences of loss of fuel system suction feed capability, followed by total loss of pressure of the fuel feed system. We are issuing this AD to detect and correct failure of the engine fuel suction feed of the fuel system, which could result in multi-engine flameout, inability to restart the engines, and consequent forced landing of the airplane.

**Compliance**

(e) Comply with this AD within the compliance times specified, unless already done.

**Operational Test/Other Specified Actions**

(f) Within 7,000 flight hours after the effective date of this AD, perform an operational test of the engine fuel suction feed of the fuel system, and perform all other related testing, as applicable, before further flight, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 727–28–80, dated June 21, 1985. Repeat the operational test thereafter at intervals not to exceed 7,000 flight hours.

**Operator's Equivalent Procedure**

(g) If any discrepancy is found, and Boeing Service Bulletin 727–28–80, dated June 21, 1985, specifies that certain actions (i.e., a vacuum test of the fuel feed system) may be accomplished using an operator's ''equivalent procedure'' (with substitute test equipment): The actions must be accomplished in accordance with Figure 4 of the service bulletin.

**Alternative Methods of Compliance (AMOCs)**

(h)(1) The Manager, Seattle ACO, FAA, ATTN: Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6438; fax (425) 917–6590, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on June 9, 2008.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8–13920 Filed 6–19–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0643; Directorate Identifier 2008–NM–094–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 and 440) Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Bombardier Aerospace has completed a system safety review of the aircraft fuel system against fuel tank safety standards * * *.

[A]ssessment showed that supplemental maintenance tasks [for certain bonding jumpers, wiring harnesses, and hydraulic systems, among other items] are required to prevent potential ignition sources inside the fuel system, which could result in a fuel tank explosion. * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by July 21, 2008.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Rocco Viselli, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart

Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7331; fax (516) 794–5531.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0643; Directorate Identifier 2008–NM–094–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

On February 28, 2008, we issued AD 2008–06–02, Amendment 39–15414 (73 FR 13100, March 12, 2008). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2008–06–02, we have determined that, for certain airplanes, the initial compliance times for doing the tasks specified in paragraph (f)(1) of that AD must be reduced. AD 2008–06–02 resulted from Canadian Airworthiness Directive CF–2007–29, dated November 22, 2007 (referred to after this as ''the MCAI'').

The MCAI does not provide an initial compliance time for doing the tasks for certain airplanes. In AD 2008–06–02, for those airplanes, we required an initial compliance time that started from the effective date of the AD, or the date of issuance of the original Canadian standard airworthiness certificate or the date of issuance of the original Canadian export certificate of airworthiness, whichever occurs later. Although the initial compliance time for doing the tasks is unstated in the MCAI, we have determined that the intent of the MCAI is for the initial compliance time to start from the initial delivery date of the airplane in order to address the identified unsafe condition in a timely manner.

This proposed AD would require reduced thresholds for the initial compliance times for the airplanes and tasks that are not identified in paragraphs (f)(2), (f)(3), and (f)(4) of AD 2008–06–02. You may obtain further information by examining the MCAI in the AD docket.

**FAA's Determination and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Differences Between This AD and the MCAI or Service Information**

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

**Costs of Compliance**

Based on the service information, we estimate that this proposed AD would affect about 689 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $55,120, or $80 per product.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by removing Amendment 39–15414 (73 FR 13100, March 12, 2008) and adding the following new AD:

**Bombardier, Inc. (Formerly Canadair):** Docket No. FAA–2008–0643; Directorate Identifier 2008–NM–094–AD.

**Comments Due Date**

(a) We must receive comments by July 21, 2008.

**Affected ADs**

(b) The proposed AD supersedes AD 2008–06–02, Amendment 39–15414.

**Applicability**

(c) This AD applies to all Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, all serial numbers.

**Note 1:** This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (h)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

**Subject**

(d) Air Transport Association (ATA) of America Code 28: Fuel.

**Reason**

(e) The mandatory continuing airworthiness information (MCAI) states:

Bombardier Aerospace has completed a system safety review of the aircraft fuel system against fuel tank standards introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were then assessed using Transport Canada Policy Letter No. 525–001, to determine if mandatory corrective action is required.

The assessment showed that supplemental maintenance tasks [for certain bonding jumpers, wiring harnesses, and hydraulic systems, among other items] are required to prevent potential ignition sources inside the fuel system, which could result in a fuel tank explosion. Revision has been made to Canadair Regional Jet Model CL–600–2B19 Maintenance Requirements Manual, CSP A–053, Part 2, Appendix D, ''Fuel System Limitations'' to introduce the required maintenance tasks.

The corrective action is revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems.

**Restatement of Certain Requirements of AD 2008–06–02**

(f) Unless already done, do the following actions.

(1) Within 60 days after April 16, 2008 (the effective date of AD 2008–06–02), revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate the inspection and maintenance requirements, as applicable, in Canadair Regional Jet Model CL–600–2B19 Airworthiness Requirements in the Maintenance Requirements Manual, CSP A–053, Part 2, Appendix D, ''Fuel System Limitations,'' Revision 7, dated May 10, 2007 (''the MRM''), task numbers 28–11–00–601, 28–11–00–602, 28–11–00–603, 28–11–00–604, 29–33–01–601, and 29–33–01–602. Except as required by paragraph (g)(1) of this AD, for those task numbers, the initial compliance times start at the applicable time specified in paragraphs (f)(2), (f)(3), and (f)(4) of this AD, and the repetitive inspections must be accomplished thereafter at the interval specified in the MRM, except as provided by paragraphs (f)(5) and (h)(1) of this AD. Accomplishing the revision in accordance with a later revision of the MRM is an acceptable method of compliance if the revision is approved by the Manager, New York Aircraft Certification Office (ACO), FAA), or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

(2) For airplanes having more than 15,000 flight hours as of April 16, 2008, the initial compliance time for Tasks 28–11–00–601, 28–11–00–602, 28–11–00–603, and 28–11–00–604 is within 5,000 flight hours after April 16, 2008. Thereafter, these tasks must be accomplished within the repetitive interval specified in Canadair Regional Jet Model CL–600–2B19, Airworthiness Requirements in the Maintenance Requirements Manual, CSP A–053, Part 2, Appendix D, ''Fuel System Limitations,'' Revision 7, dated May 10, 2007.

(3) For Task 29–33–01–601, the initial compliance time is within 5,000 flight hours after April 16, 2008. Thereafter, task 29–33–01–601 must be accomplished within the repetitive interval specified in Canadair Regional Jet Model CL–600–2B19, Airworthiness Requirements in the Maintenance Requirements Manual, CSP A–053, Part 2, Appendix D, ''Fuel System Limitations,'' Revision 7, dated May 10, 2007.

(4) For airplanes having more than 27,500 flight hours as of April 16, 2008, the initial compliance time for Task 29–33–01–602 is within 2,500 flight hours after April 16, 2008. Thereafter, this task must be accomplished within the repetitive interval specified in Canadair Regional Jet Model CL–600–2B19, Airworthiness Requirements in the Maintenance Requirements Manual, CSP A–053, Part 2, Appendix D, ''Fuel System Limitations,'' Revision 7, dated May 10, 2007.

(5) After accomplishing the actions specified in paragraphs (f)(1), (f)(2), (f)(3), and (f)(4) of this AD, no alternative inspections/limitation tasks or inspection/limitation task intervals may be used unless the inspections/limitation tasks or inspection/limitation task intervals are part of a later approved revision of Canadair Regional Jet Model CL–600–2B19, Airworthiness Requirements in the Maintenance Requirements Manual, CSP A–053, Part 2, Appendix D, ''Fuel System Limitations,'' Revision 7, dated May 10, 2007, that is approved by the Manager, New York ACO, FAA, or TCCA (or its delegated agent); or unless the inspection/limitation task or inspection/limitation task interval is approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (h)(1) of this AD.

**New Requirements of This AD: Actions and Compliance**

(g) Unless already done, do the following actions.

(1) At the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD, as applicable, do the initial inspection for Tasks 28–11–00–601, 28–11–00–602, 28–11–00–603, 28–11–00–604, and 29–33–01–602, as applicable, in the MRM, and thereafter repeat the inspection at the applicable interval specified in the MRM, except as provided by (g)(2) of this AD.

(i) For airplanes not identified in paragraph (f)(2) of this AD, the initial compliance time for Tasks 28–11–00–601, 28–11–00–602, 28–11–00–603, and 28–11–00–604 is before the accumulation of 20,000 total flight hours, or within 5,000 flight hours after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (f)(4) of this AD, the initial compliance time for Task 29–33–01–602 is before the accumulation of 30,000 total flight hours, or within 2,500 flight hours after the effective date of this AD, whichever occurs later.

(2) After accomplishing the actions specified in paragraphs (g)(1)of this AD, no alternative inspections/limitation tasks or inspection/limitation task intervals may be used unless the inspections/limitation tasks or inspection/limitation task intervals are part of a later approved revision of Canadair Regional Jet Model CL–600–2B19, Airworthiness Requirements in the Maintenance Requirements Manual, CSP A–053, Part 2, Appendix D, ''Fuel System Limitations,'' Revision 7, dated May 10, 2007, that is approved by the Manager, New York ACO, FAA, or TCCA (or its delegated agent); or unless the inspection/limitation task or inspection/limitation task interval is approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (h)(1) of this AD.

**FAA AD Differences**

**Note 2:** This AD differs from the MCAI and/or service information as follows: No differences.

**Other FAA AD Provisions**

(h) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Rocco Viselli, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7331; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required

to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

**Related Information**

(i) Refer to MCAI Canadian Airworthiness Directive CF–2007–29, dated November 22, 2007, and Canadair Regional Jet Model CL–600–2B19, Airworthiness Requirements in the Maintenance Requirements Manual, CSP A–053, Part 2, Appendix D, ''Fuel System Limitations,'' Revision 7, dated May 10, 2007; for related information.

Issued in Renton, Washington, on June 10, 2008.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8–13922 Filed 6–19–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0642; Directorate Identifier 2008–NM–039–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 Airplanes, and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all EMBRAER Model EMB–135 airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. The existing AD currently requires replacing the metallic tubes enclosing the vent and pilot valve wires in the left- and right-hand wing fuel tanks with non-conductive hoses. This proposed AD would add airplanes to the applicability of the existing AD. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent an ignition source inside the fuel tank that could ignite fuel vapor and cause a fuel tank explosion and loss of the airplane.

**DATES:** We must receive comments on this proposed AD by July 21, 2008.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0642; Directorate Identifier 2008–NM–039–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

On June 1, 2007, we issued AD 2007–12–17, amendment 39–15095 (72 FR 32780, June 14, 2007), for certain EMBRAER Model EMB–135 airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. That AD requires replacing the metallic tubes enclosing the vent and pilot valve wires in the left- and right-hand wing fuel tanks with non-conductive hoses. That AD resulted from fuel system reviews conducted by the manufacturer. We issued that AD to prevent an ignition source inside the fuel tank that could ignite fuel vapor and cause a fuel tank explosion and loss of the airplane.

**Actions Since Existing AD Was Issued**

Since we issued AD 2007–12–17, we have been notified by the airplane manufacturer that additional airplanes are also subject to the unsafe condition identified in the existing AD.

**Relevant Service Information**

EMBRAER has issued Service Bulletin 145–28–0023, Revision 11, dated December 4, 2007. The procedures specified in Revision 11 of the service bulletin are essentially the same as those described in EMBRAER Service Bulletin 145–28–0023, Revision 07, dated February 7, 2007. We referred to Revision 07 of the service bulletin in AD 2007–12–17 as the appropriate source of service information for actions required in that AD for certain airplanes. However, Revision 11 of the service bulletin includes airplanes that are not identified in Revision 07. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

**U.S. Type Certification of the Airplane**

These airplane models are manufactured in Brazil and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

This proposed AD would supersede AD 2007–12–17 and would retain the requirements of the existing AD. This proposed AD would also add airplanes to the applicability of the existing AD.

**Differences Between the Proposed AD and Service Information**

This proposed AD is applicable to all EMBRAER Model EMB–135 airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. The EMBRAER service bulletins were revised to add airplanes to the effectivities of those documents, but they do not apply to all airplanes. We have coordinated this difference with both EMBRAER and the Agência Nacional de Aviaço Civil (ANAC). It should be noted that ANAC is not issuing a parallel airworthiness directive because they have previously issued Brazilian airworthiness directive 2006–06–02, effective June 28, 2006, addressing the identified unsafe condition; that airworthiness directive is applicable to ''all EMBRAER EMB–145( ) and EMB–135( ) aircraft models in operation.''

**Costs of Compliance**

The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The average labor rate is $80 per work hour.

ESTIMATED COSTS

| Action | Work hours | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|
| Tube replacement (required by AD 2007–12–17). | 1 | $1,121 (for Model EMB–135BJ airplanes). | $1,201 | 30 | $36,030 |
| | 1 | $1,788 (for remaining airplanes) ..... | 1,868 | 593 | 1,107,724 |
| Tube replacement for additional airplanes. | 1 | $1,121 (for Model EMB–135BJ airplanes). | 1,201 | 11 | 13,211 |
| | 1 | $1,788 (for remaining additional airplanes). | 1,868 | 75 | 140,100 |

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–15095 (72 FR 32780, June 14, 2007) and adding the following new airworthiness directive (AD):

**Empresa Brasileira de Aeronautica S.A. (EMBRAER):** Docket No. FAA–2008–0642; Directorate Identifier 2008–NM–039–AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by July 21, 2008.

**Affected ADs**

(b) This AD supersedes AD 2007–12–17.

**Applicability**

(c) This AD applies to all EMBRAER Model EMB–135ER, –135KE, –135KL, –135LR, and –135BJ airplanes; and all Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; certificated in any category.

**Unsafe Condition**

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent an ignition source inside the fuel tank that could ignite fuel vapor and cause a fuel tank explosion and loss of the airplane.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Requirements of AD 2007–12–17 Including Additional Airplanes**

**Tube Replacement**

(f) For airplanes identified in the applicable service bulletins specified in paragraphs (f)(1) and (f)(2) of this AD: Within 5,000 flight hours or 48 months after July 19, 2007 (the effective date of AD 2007–12–17), whichever occurs first, replace the metallic tubes enclosing the vent and pilot valve wires in the left- and right-hand wing fuel tanks with new, improved, non-conductive hoses, in accordance with the Accomplishment Instructions of the service bulletins specified in paragraph (f)(1) or (f)(2) of this AD, as applicable.

(1) For Model EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes: EMBRAER Service Bulletin 145–28–0023, Revision 07, dated February 7, 2007.

(2) For Model EMB–135BJ airplanes: EMBRAER Service Bulletin 145LEG–28–0018, Revision 01, dated April 20, 2005.

(g) For Model EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes that are not identified in paragraph (f)(1) of this AD: Within 5,000 flight hours or 48 months after the effective date of this AD, whichever occurs first, replace the metallic tubes enclosing the vent and pilot valve wires in the left- and right-hand wing fuel tanks with new, improved, non-conductive hoses; in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–28–0023, Revision 11, dated December 4, 2007.

**Credit for Actions Done Using Previous Service Information**

(h) Actions accomplished before the effective date of this AD in accordance with the service information specified in Table 1 of this AD are considered acceptable for compliance with the corresponding actions of this AD.

TABLE 1.—ACCEPTABLE EMBRAER SERVICE INFORMATION

| EMBRAER Service Bulletin | Revision level | Date |
|---|---|---|
| 145–28–0023 | Original | April 19, 2004. |
| 145–28–0023 | 01 | June 9, 2004. |
| 145–28–0023 | 02 | November 8, 2004. |
| 145–28–0023 | 03 | April 27, 2005. |
| 145–28–0023 | 04 | November 7, 2005. |
| 145–28–0023 | 05 | May 15, 2006. |
| 145–28–0023 | 06 | October 31, 2006. |
| 145–28–0023 | 07 | February 7, 2007. |
| 145–28–0023 | 08 | May 25, 2007. |
| 145–28–0023 | 09 | July 30, 2007. |
| 145–28–0023 | 10 | October 28, 2007. |
| 145LEG–28–0018 | Original | April 23, 2004. |

**Compliance (AMOCs)**

(i)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

**Related Information**

(j) None.

Issued in Renton, Washington, on June 6, 2008.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8–13923 Filed 6–19–08; 8:45 am]

**BILLING CODE 4910–13–P**

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

**[Docket Number: SSA–2008–0031]**

**RIN 0960–AG68**

## Technical Amendments to Definition of Persons Closely Approaching Retirement Age

**AGENCY:** Social Security Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** We propose to modify our rules on age used in determining disability under titles II and XVI of the Social Security Act (''The Act'') to revise the definition of persons ''closely approaching retirement age'' from ''60–64'' to ''60 or older.'' The purpose of these changes is to acknowledge that we make disability determinations for individuals over age 64. These proposed changes are technical corrections that would help to explain how we currently determine disability for such individuals and would not have any substantive effect.

**DATES:** To ensure that we consider your comments, we must receive them no later than August 19, 2008.

**ADDRESSES:** You may submit comments by any one of four methods—Internet, facsimile, regular mail, or hand-delivery. Commenters should not submit the same comments multiple times or by more than one method. Regardless of which of the following methods you choose, please state that your comments refer to Docket No. SSA–2008–0031 to ensure that we can associate your comments with the correct regulation:

1. Federal eRulemaking portal at *http://www.regulations.gov.* (This is the most expedient method for submitting your comments and we strongly urge you to use it.) In the ''Comment or Submission'' section of the webpage, type ''SSA–2008–0031,'' select ''Go,'' and then click ''Send a Comment or Submission.'' The Federal eRulemaking portal will issue you a tracking number when you submit a comment.

2. Telefax to (410) 966–2830.

3. Letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703.

4. Deliver your comments to the Office of Regulations, Social Security Administration, 922 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days.

All comments are posted on the Federal eRulemaking portal, although they may not appear for several days after receipt of the comment. You may also inspect the comments on regular business days by arranging with the contact person shown in this preamble.

*Caution:* All comments we receive from members of the public are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov.* You should be careful to include in your comments only information that you wish to make publicly available on the Internet. We strongly urge you not to include any personal information, such as your Social Security number or medical information, in your comments.

**FOR FURTHER INFORMATION CONTACT:** Helen Droddy, Regulations Analyst, 934 Altmeyer Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1483, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

**SUPPLEMENTARY INFORMATION:**

**Electronic Version**

The electronic file of this document is available on the date of publication in

the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

**Change to Definition of Persons ''Closely Approaching Retirement Age''**

In an effort to keep our regulations current, we regularly review our regulations to eliminate or modify any rules affected by legal or policy changes. Our current rules define individuals ''closely approaching retirement age'' as those who are ''age 60–64.'' 20 CFR 404.1563(e) (2007); 20 CFR 416.963(e) (2007).

An individual can establish entitlement to benefits based on disability or blindness until the month in which he or she attains full retirement age under title II. When we first published these rules, we did not make disability determinations for individuals who were over 64 years of age because age 65 was full retirement age under title II. In 1983, Congress legislated a gradual increase in ''full retirement age'' (''FRA'') from 65 to 67. As a result, we are now processing disability claims for individuals who are over age 64.

Under title XVI, we sometimes must determine whether individuals age 65 or older are disabled in order to determine, among other things, benefit eligibility of ''qualified'' aliens, eligibility for certain State supplements, the applicability of work incentive provisions, or the appropriate evaluation of income and resources. Currently, when we determine whether such individuals are disabled, we generally use the same rules as we do for individuals who are age 60–64.

We propose to modify our rules at §§ 404.1563(e); 404.1568(d)(4); 416.963(e); 416.968(d)(4); and part 404, subpart P, appendix 2, §§ 202.00(f), and 203.00(c) to include individuals over age 64 in the subcategory of those ''closely approaching retirement age'' for benefits based on disability under titles II and XVI of the Act. This modification would make the definition consistent with our definition of FRA and acknowledge that we make disability determinations for individuals over age 64 under title XVI. The proposed changes are technical corrections and would not have any substantive effect.

In 2005, we published an NPRM that would have redefined all of the age categories. However, this NPRM does not incorporate the changes suggested in the 2005 NPRM nor modify our existing policy in any manner.

**Clarity of These Proposed Rules**

Executive Order (''E.O.'') 12866, as amended, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand.

For example:

- Would more (but shorter) sections be better?
- Are the requirements in the rules clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?

**When Will We Start To Use These Rules?**

We will not use these rules until we evaluate the public comments we receive on them, determine whether they should be issued as final rules, and issue final rules in the **Federal Register**. If we publish final rules, we will explain in the preamble how we will apply them, and summarize and respond to the public comments. Until the effective date of any final rules, we will continue to use our current rules.

**Regulatory Procedures**

*Executive Order 12866, as Amended*

We have consulted with the Office of Management and Budget (''OMB'') and determined that these proposed rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended. Thus, they are not subject to OMB review.

*Regulatory Flexibility Act*

We certify that these final rules will not have a significant economic impact on a substantial number of small entities as they affect individuals only. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

*Paperwork Reduction Act*

These regulations impose no reporting or recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.006 Supplemental Security Income.)

**List of Subjects**

*20 CFR Part 404*

Administrative practice and procedure; Blind; Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social security.

*20 CFR Part 416*

Administrative practice and procedure; Aged: Blind; Disability benefits; Public assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Dated: June 12, 2008.

**Michael J. Astrue,**

*Commissioner of Social Security.*

For the reasons set out in the preamble, we propose to amend 20 CFR parts 404 and 416 as follows:

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

### Subpart P—[Amended]

1. The authority citation for subpart P of part 404 continues to read as follows:

**Authority:** Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

2. Amend § 404.1563 to revise paragraph (e) to read as follows:

**§ 404.1563 Your age as a vocational factor.**

* * * * *

(e) *Person of advanced age.* We consider that at advanced age (age 55 or older), age significantly affects a person's ability to adjust to other work. We have special rules for persons of advanced age and for persons in this category who are closely approaching retirement age (age 60 or older). See § 404.1568(d)(4).

* * * * *

3. Amend § 404.1568 to revise the fifth sentence of paragraph (d)(4) to read as follows:

**§ 404.1568 Skill requirements.**

* * * * *

(d) *Skills that can be used in other work (transferability).* * * *

(4) *Transferability of skills for individuals of advanced age.* * * * If you are *closely approaching retirement age* (age 60 or older) and you have a severe impairment(s) that limits you to no more than *light* work, we will find that you have skills that are transferable

to skilled or semiskilled light work only if the light work is so similar to your previous work that you would need to make very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry. * * *

4. Amend part 404, subpart P, appendix 2, as follows:

a. In section 202.00, revise paragraph (f) to read as follows:

b. In section 203.00, revise the third sentence of paragraph (c) to read as follows:

**Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines**

* * * * *

202.00 *Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s).*

* * * * *

(f) For a finding of transferability of skills to light work for individuals of advanced age who are closely approaching retirement age (age 60 or older), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

* * * * *

203.00 *Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).*

* * * * *

(c) * * * Further, for individuals closely approaching retirement age (60 or older) with a work history of unskilled work and with marginal education or less, a finding of disabled is appropriate.

* * * * *

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

### Subpart I—[Amended]

5. The authority citation for subpart I of part 416 continues to read as follows:

**Authority:** Secs. 221(m), 702 (a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and (p), and 1383(b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

6. Amend § 416.963 to revise paragraph (e) to read as follows:

**§ 416.963 Your age as a vocational factor.**

* * * * *

(e) *Person of advanced age.* We consider that at advanced age (age 55 or older), age significantly affects a person's ability to adjust to other work. We have special rules for persons of advanced age and for persons in this category who are closely approaching retirement age (age 60 or older). See § 416.968(d)(4).

* * * * *

7. Amend § 416.968 to revise the fifth sentence of paragraph (d)(4) to read as follows:

**§ 416.968 Skill requirements.**

* * * * *

(d) *Skills that can be used in other work (transferability).* * * *

(4) *Transferability of skills for individuals of advanced age.* * * * If you are *closely approaching retirement age* (age 60 or older) and you have a severe impairment(s) that limits you to no more than *light* work, we will find that you have skills that are transferable to skilled or semiskilled light work only if the light work is so similar to your previous work that you would need to make very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry. * * *

[FR Doc. E8–13789 Filed 6–19–08; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF LABOR

## Employees Compensation Appeals Board

## 20 CFR Part 501

**RIN 1290–AA22**

## Rules of Procedure

**AGENCY:** Employees' Compensation Appeals Board, Department of Labor.

**ACTION:** Notice of Proposed Rulemaking (NPRM); Request for Comments.

**SUMMARY:** The Department of Labor (DOL or Department) is issuing this Notice of Proposed Rulemaking (NPRM) to update the regulations providing for appeals before the Employees' Compensation Appeals Board (Board). The Board has jurisdiction over appeals arising under the Federal Employees' Compensation Act (FECA). 5 U.S.C. 8149. Over the forty-six years since the last major revisions to the Board's procedural regulations, several aspects of the current rules have become outdated by case law precedent or technological advances. These proposed revisions will provide updated rules and guidance to all federal employees who seek to appeal from the decisions of the Office of Workers' Compensation Programs (OWCP) under FECA.

**DATES:** The Department invites interested persons to submit comments on this proposed rule. To ensure consideration, comments must be in writing and must be received on or before August 19, 2008.

**ADDRESSES:** You may submit comments, identified by Regulatory Identification Number (RIN) 1290–AA22, by either one of the two following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Written comments, disk and CD-Rom submissions may be mailed or delivered by hand delivery/courier to Alec J. Koromilas, Chairman and Chief Judge, Employees' Compensation Appeals Board, via the Office of the Clerk of the Appellate Boards, 200 Constitution Avenue, NW., Washington, DC 20210. The Office of the Clerk is open during business hours on all days except Saturdays, Sundays and Federal Holidays, from 8:30 a.m. to 5 p.m., Eastern Time.

Additional information on submitting and reviewing comments is found in Section IV.

**FOR FURTHER INFORMATION CONTACT:** Alec J. Koromilas, Chairman and Chief Judge, Employees' Compensation Appeals Board, 200 Constitution Avenue, NW., Room S–5220, Washington, DC, 20210; E-mail *contact-oas@dol.gov*; Telephone (202) 693–6406 (VOICE) (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** This preamble is divided into four sections. Section I provides general background information on the development of the proposed revisions to 20 CFR part 501. Section II is a section-by-section analysis of the proposed regulatory text. Section III covers the administrative requirements for this proposed rulemaking. Section IV provides additional information and instructions to those wishing to comment on the rule.

### I. Background

The Employees' Compensation Appeals Board was created by the Reorganization Plan No. 2 of 1946 and transferred to the Department of Labor in 1950 by Reorganization Plan No. 19 of 1950. *See* 5 U.S.C. 8145 notes. Under the Federal Employees' Compensation Act, the Secretary of Labor must provide for an Employees' Compensation Appeals Board ''* * * with the authority to hear and, subject to applicable law and the rules and

regulations of the Secretary, make final decisions on appeals taken from determinations and awards with respect to claims of employees.'' 5 U.S.C. 8149.

It has been forty-six years since the last major revisions to the Board's procedural regulations, and the Department has not revised the Part 501 rule at all since 1988. *See* 53 Fed. Reg. 49491 (December 7, 1988). Since these last amendments, administrative procedures have been updated by Board case law and practice. This proposed rule incorporates and codifies current Board operating procedures to provide more thorough and accurate rules and guidance to Appellants and the Representatives who come before the Board. In addition, the proposed rule includes three major revisions: amending the time provided for appeal, the procedures regarding requests for oral argument and attorney fees.

First, the proposed regulations provide all Appellants 180 days in which to file an appeal of a decision issued by OWCP. This is a change from the current regulations, which require an appeal to be filed within 90 days of the issuance of an OWCP decision for U.S. and Canadian residents, and 180 days for those residing outside the U.S. and Canada. Current regulations also permit the Board to waive the 90-day or 180-day requirement and allow an appeal to be filed within one year of the date of the OWCP decision, ''for good cause shown,'' without defining or describing what constitutes ''good cause.'' The proposed regulations establish a uniform appeal time, but give the Board discretion to increase the timeframe for any Appellant who demonstrates compelling circumstances. Given a claimant's ability to request reconsideration before the OWCP, and because the Board's review of the case is limited to the evidence before the OWCP at the time of the decision under review, the Board believes that allowing a uniform 180 days for the filing of an appeal (with the discretion to extend the 180 days for an Appellant who demonstrates compelling circumstances) provides sufficient time for an Appellant to achieve review of a decision by the Director.

Second, the proposed regulations provide for oral argument at the discretion of the Board on its own, or in response to a written request made within 60 days of the filing of the appeal that establishes the need for oral argument. This is a change from the current regulations that provide Appellants with a right to an oral argument before the Board. Although oral argument can be beneficial in the context of novel issues presented by the appeal, or in other contexts such as resolving a perceived conflict between Board decisions on similar issues, there are other situations in which oral argument is unlikely to add to the record before the Board and therefore the Board is proposing to make the granting of oral argument a matter within the Board's discretion.

Finally, an explicit articulation of the requirement for requesting consideration and approval by the Board of any proposed fees for work before the Board is provided in this revision.

In drafting the proposed regulations, the Board has anticipated that technological advances may, in the future, allow the filing, notice, service and presentation of documents and argument by electronic means. These proposed regulations in no way limit the Board's discretion in utilizing technological advances.

## II. Summary and Discussion of Regulatory Provisions: Rules of Procedure

*Section 501.1 Definitions*

In this subsection, the Board has amended and added certain defined terms. In paragraph (a), ''FECA'' replaces ''Act'' to more clearly reference the Federal Employees' Compensation Act. A definition of the Chief Judge and Chairman of the Board is provided for the first time in (c), as is the definition of other Board members and their roles in a new (d). In paragraph (e), ''OWCP'' has been substituted for ''Office'' to more clearly reference the Office of Workers' Compensation Programs. As proceedings before the Board are non-adversarial, references to ''party'' have been removed from section 501.1 and throughout the rule. In place of the term ''party,'' this section contains new paragraphs (f), (g), and (h) for the terms ''Director,'' ''Appellant'' and ''Representative.'' The definition of ''counsel'' under the former paragraph (f) is incorporated into the definition of ''Representative'' in the new paragraph (h). These terms also are used throughout the proposed regulations.

The definition of ''Director'' in paragraph (f) deletes references to the Canal Zone and Panama Canal Company as those entities ceased to operate following the October 1, 1979 enactment of the Panama Canal Act of 1979. Workers hired after that date are covered under the social security system of the Republic of Panama. Workers hired before that date or who are U.S. citizens continue to be covered under FECA. *See* Exec. Order 12,652, 53 FR 36775 (Sept. 19, 1988). Paragraph (f) recognizes that the Director may delegate his or her authority. Finally, paragraph (f) states that the Director is represented before the Board by an attorney designated by the Solicitor of Labor.

New subsection (i) defines the term ''Decision.'' Paragraph (j) defines the term ''Clerk or Office of the Clerk.''

*Section 501.2 Scope and Applicability of Rules; Compensation and Jurisdiction of the Board*

In paragraph (b), clarification is provided regarding the appointment of three permanent judges and other alternate judges by the Secretary of Labor. The Board has used alternate judges (formerly ''members'') since at least 1950; the Board's use of alternate judges was approved in *Norred* v. *Brock,* Civ. A. No. 86–887 SSH, 1987 WL 18742 (D.D.C., October 7, 1987). In addition, a sentence is added to reflect that the Board's functions are quasi-judicial in nature, because the Board inherited the quasi-judicial functions of the Employees' Compensation Commission when the Board was established in 1946. *See Clinton K. Yingling,* 4 ECAB 529, 533–537 (1952).

Paragraph (c) provides that the Board's jurisdiction on appeal extends only to the record considered by OWCP. During the pendency of an appeal, Appellants often submit new evidence to the Board that cannot be considered, or Appellants simultaneously seek an appeal and a request for reconsideration before OWCP with the submission of new evidence. The Board clarifies its procedure in subsection (c). Subsection (c)(i) articulates that any evidence not previously considered by OWCP will not be considered by the Board on appeal; (c)(ii) states that there is no appeal with respect to any interlocutory matter decided (or not decided) by OWCP during the pendency of a case (an example of an interlocutory matter is a remand by an OWCP Hearing Representative to the district office for further development); and (c)(iii) codifies Board practice that once an appeal is docketed by the Board, OWCP cannot retain jurisdiction to consider a simultaneous request for reconsideration or hearing on the same issue until after the Board relinquishes jurisdiction.

*Section 501.3 Notice of Appeal*

In this section, the Board clarifies the elements of a Notice of Appeal. Paragraphs (a) and (b) contain essentially the same language as the current regulation regarding who may file an appeal and where an appeal is to be filed. Subsections (c)(i)–(v) expand

upon the elements that must be contained in an Appeal Notice. Additional requirements of providing the date of the appeal, the phone numbers of the Appellant and any duly appointed Representative, a signed authorization for that Representative, and the Appellant's signature on the notice of appeal have been added. These items are intended to increase the Clerk's ability to timely contact Appellant or his or her Representative during the pendency of the appeal, and to verify the Representative named in the appeal. The addition of this data achieves consistency with the information requested through the optional use of the Form AB–1, which may be used but is not required.

Paragraph (d) incorporates case law for the circumstances that allow substitution for a deceased Appellant. When an employee properly files an appeal before the Board but then dies prior to the Board's disposition of the appeal, the appeal may proceed to adjudication only if there is a substitution of a proper appellant. The request must be made by motion, providing documentation of the death and requesting a determination as to whether a substitution of an appropriate party in interest has been proposed. *See John J. Cremo*, 38 ECAB 153, 155–156 (1986).

The proposed paragraph (e) provides 180 days for the filing of all appeals, regardless of where the Appellant lives. Currently, the rule provides 90 days for persons living in the United States or Canada and 180 days for persons living outside the United States or Canada. As discussed above, the Board believes 180 days is a sufficient amount of time for a claimant to appeal an adverse decision, given a claimant's ability to request reconsideration before the OWCP, and because the Board's review of the case is limited to the evidence before the OWCP at the time of the decision under review.

Additionally, paragraph (e) states that should compelling circumstances prevent an Appellant from meeting this 180-day limitation, the Board has retained discretion to extend this time period, but only on specific application to the Board. As paragraph (e) states, ''compelling circumstances'' are ''circumstances beyond the Appellant's control'' and do not include ''delay caused by failure of an individual to exercises due diligence in submitting a notice of appeal.'' The Board has adopted a new term, ''compelling circumstances,'' in place of ''good cause,'' for the standard describing its discretion in accepting an appeal filed after the 180 days. The phrase ''compelling circumstances'' has been substituted in the proposed rule to insure that an objective standard for accepting an appeal after 180 days is being uniformly followed. The standard of ''good cause'' which appears in the current regulations concerning time limits for appeals was not being enforced in practice. For example, ''compelling circumstances'' could include a medical condition that renders the Appellant incompetent or military service in a war zone. The Board will, in its discretion, consider any such request on a case-by-case basis.

Date of filing requirements have been moved from Section 501.3(d)(3) to paragraph (f) and include more extensive discussion of these requirements to assist Appellants. The new language in (f)(i) replaces language currently found in 501.10(c) by acknowledging that commercial delivery services may be used by Appellants in place of the U.S. Mail Service, but only the date of receipt by the Clerk will then be used to determine timeliness. If, however, the U.S. Mail Service is used, the Board will continue to look to the date of mailing to establish timeliness if the date of receipt by the Clerk would make the appeal untimely. Subsection (f)(ii) contains provisions in current section 501.10(d)(1) and also incorporates case law and current Board practice that the determination of timeliness of the appeal starts the day after the date of the OWCP decision. *See Angel M. Labron, Jr.*, 51 ECAB 488 (2000), *citing to John B. Montoya*, 43 ECAB 1148 (1992), *citing to Marguerite J. Dvorak*, 33 ECAB 1682 (1982). While section 501.3(f)(ii) only addresses timelines with respect to filing dates, the Board will consistently apply this section's method of computing time for all actions in the unlikely event that time computation becomes an issue for another action under this Part.

The provisions for the filing of pleadings currently found in section 501.3(e) are moved in the proposed regulation to section 501.4(c) and (d). The term ''pleadings'' is broadly construed to include all written communications from an Appellant or Representative to the Board, including briefs, statements of law, memoranda in justification, motions, and the optional form AB–1.

Proposed paragraph (g) clarifies that if an appeal is filed more than 180 days from the date of the OWCP decision without a successful request to extend time due to compelling circumstances, the appeal will be dismissed and there will be no further review of the OWCP decision.

Proposed paragraph (h) discusses the procedures used by the Clerk upon receipt of an incomplete appeal, currently found at the end of section 501.3(c). The proposed paragraph (h) specifies that it is the Clerk who will specify a reasonable time for Appellant to submit all required information missing from the appeal. Additionally, paragraph (h) states that if the needed information is not received in the time specified, the appeal will be dismissed.

*Section 501.4 Case Record; Inspection; Submission of Pleadings and Motions*

The current regulations regarding service of an appeal on OWCP and transmission of the OWCP record to ECAB, now at 501.4(a) and (b), are essentially restated in the proposed 501.4(a), except for the reference to the Solicitor of Labor acting as a conduit for transmission of the OWCP records from OWCP to the Board. The Office of the Solicitor's role as Representative of OWCP is now referenced in section 501.1(f)'s definition of the Director.

Paragraph (b) describes the different options available to an Appellant who wishes to inspect, or receive a copy of, the OWCP record that is on appeal to the Board. This paragraph incorporates many of the provisions regarding inspection of the ECAB docket and record that are currently found in Section 501.8(b). However, the proposed paragraph no longer states that the docket of the Board is open to public inspection. This change acknowledges that the docket is maintained in a Privacy Act system of records, DOL/ECAB–1, Employees' Compensation Appeals Board Docket Records, 67 Fed. Reg. 16867 (April 8, 2002). Consequently, release of information from the docket is no longer automatic; any release of information from the docket must be in conformity with the requirements of the Privacy Act, 5 U.S.C. 552a, and the Department of Labor's implementing regulations found at 29 CFR part 71.

Paragraphs (c) and (d) expand current Section 501.3(e), which allows applications for review to be accompanied by a brief or supporting statement, by providing for the filing of pleadings (including supporting statements, briefs, and memoranda of law), and motions. Consistent with current Board practice, pleadings generally provide any type of information to the Board, whereas motions request Board action. Motions may include a request that the Board dismiss the appeal, affirm the OWCP decision or remand for further

consideration, approve a substitution on appeal, or other such matter. The Board on its own may also take action regarding a pending appeal. In addition, the Clerk is solely responsible for the service of a copy of all pleadings and motions filed with the Board on the Appellant, his or her Representative and the Director. This change to the original provision in subsection 501.10(b), which has been deleted, is intended to ensure that all documents filed with the Board are provided to Appellants, their Representatives and the Director. In addition, provisions originally contained in 501.10(d)(3) regarding motions for extension of time to file a paper other than a notice of appeal or petition for reconsideration are now contained in section 501.4(d).

Paragraph (e) requires the filing of an original and two copies of all papers with the Clerk, replacing Section 501.10(a). This is an increase from one to two copies to facilitate the processing efficiency of the Clerk.

*Section 501.5 Oral Argument*

This proposed section revises and expands upon the current regulation's provisions regarding oral argument, also found at section 501.5. Proposed paragraph (a) provides that the granting of oral argument is within the discretion of the Board and not automatically scheduled upon the request of an Appellant or the Director. This is a change in the availability of oral argument. As previously discussed, while oral argument can provide the Board valuable assistance in addressing and evaluating the issues presented on appeal, the Board has concluded that automatic availability of oral argument on request of an Appellant or the Director is not necessary. The Board still retains the ability to grant oral argument in an appropriate case. The Board may grant oral argument, for example, when the case presents an issue not previously considered by the Board, when oral argument will assist the Board in carrying out the intent of FECA, in the interests of justice, or when oral argument will resolve a conflict in Board decisions on a substantial question of law.

Proposed paragraph (b) provides that a request for oral argument must specify the issue(s) to be addressed, provide a statement supporting the need for oral argument, and be submitted in writing no later than 60 days from the date of the appeal. If not granted, the Board will proceed to a decision on the record.

Revised paragraph (c) provides that the Clerk will notify the Appellant and Director at least 30 days before the date set for the argument, and the notice of oral argument will state the issues to be heard. The increase from 10 to 30 days is designed to give Appellants more time to prepare for oral argument and to arrange travel to Washington, DC. Paragraphs (d) and (e) specify that thirty minutes will be provided for the argument by either the Appellant or his or her Representative, not both. This changes the current regulations statement that ''generally not more than 1 hour shall be allowed for oral argument.'' However, the proposed regulation retains the Board's discretion to extend the new 30 minute time limit. In new paragraph (f), the Board emphasizes that costs associated with travel to oral argument, held in Washington, DC, are borne by the Appellant. This is consistent with current practice.

Proposed paragraph (g) codifies the current practice that a continuance may only be granted for good cause shown and only if the request is received by the Board at least 15 days prior to the date scheduled for oral argument. Paragraph (h) continues the Board's discretion, now found at current section 501.5(c), to determine that non-appearance by either Appellant or the Director will not delay the Board's resolution of an appeal and the Board may treat the appeal as submitted on the record.

*Section 501.6 Decisions and Orders*

The Board is revising this section to provide more information regarding the Board's practice in the issuance of decisions and orders. Paragraph (a) states that the Board's decision will be in writing and the types of decisions that the Board may make. Paragraph (b) states the number of judges on a panel and the number needed to make a decision. Paragraph (c) provides new language, consistent with Board practice, regarding how the date of issuance is determined. Proposed paragraph (d) combines the provisions found in current paragraphs (c) and (d), stating that the Board's decision will become final 30 days from the date of issuance and that at that point the Board will no longer retain jurisdiction over the appeal unless a petition for reconsideration is submitted and granted or unless the Board fixes another date for finality. *See* Section 501.7. Paragraph (e) explains dispositive orders. Paragraph (f) states that the Board will send a copy of its opinion to the Appellant as well as the Director and notes that, where Appellant has authorized a Representative on appeal, service of the Board's opinion will be made to both the Appellant and to the Representative.

*Section 501.7 Petition for Reconsideration*

The proposed revisions to this section expand upon the information in the current section 501.7 regarding the Board's practice and procedures regarding requests for reconsideration. Paragraph (a) maintains a 30 day time period for filing a petition for reconsideration, with time measured from the date of the issuance of a decision or order, unless the Board sets another time period.

Paragraph (b) changes the instructions on where to file the petition, and newly stipulates that the Clerk will ensure that Appellants, their Representatives and the Director are served with copies of the petition for reconsideration. Paragraph (c) states what information must be in the petition. Paragraph (d) describes the panel of judges who will review the petition, noting that it is the Board's practice to assign the same panel to hear a petition for reconsideration if at all possible. This codification of agency practice provides continuity and efficiency in the consideration of reconsideration requests. Paragraph (e) allows, but does not require, an answer to be filed. Paragraph (f) notes that, at the Board's discretion, an oral argument may be allowed prior to the Board's decision on the petition for reconsideration.

*Section 501.8 Clerk of the Office of the Appellate Boards; Docket of Proceedings; Records*

Section 501.8 is revised to provide more information regarding the Clerk's office, the docket and record maintained by the Board. Paragraph (a) gives the address and business hours for the Clerk. Business hours of the Clerk are provided by the Board to clarify ''close of business'' for purposes of section 501.3(f). Paragraph (b) states that the Clerk will maintain the docket in the chronological order in which notices of appeal are received, but that the Board retains discretion regarding the order in which it will hear appeals. Provisions and proposed amendments to current regulation section 501.8(b), including the elimination of the provision providing public inspection of the ECAB docket, and clarifications regarding the public availability of the OWCP record, have been moved to proposed section 501.4(b).

Paragraph (c) continues to state that final decisions of the Board will be published in a form readily available for inspection by the general public. This proposed regulation will not change current Board practices in publication of final decisions. The phrase ''readily

available'' means the Board will provide copies of its decisions in a form that complies with section 508 of the Rehabilitation Act of 1973, 29 U.S.C. 701 *et seq.*

The Board, through its written decisions, has the responsibility for interpreting the FECA and resolving matters raised on appeal. The written decisions of the Board set forth the relevant facts of each claim, evaluate the facts in terms of applicable workers' compensation law, and affirm OWCP's decision or direct corrective action or discretionary relief, or order such action as may be appropriate depending on the case. The Board has the responsibility to establish a sound body of case precedent in the interpretation of the FECA, its implementing regulations, and procedures in order to provide guidance in the administration of Federal workers' compensation claims. The Board's decisions are cited in OWCP motions and decisions as well as by courts and legal authorities. Due to budgetary considerations, however, the Board is not able to include every written decision in its annual paper bound volume of published decisions, *Digest and Decisions of the Employees' Compensation Appeals Board,* but takes great care selecting those decisions that represent important case precedent. The annual volume does not include routine cases or procedural orders. *The Digest and Decisions of the ECAB* is available at various law libraries throughout the country. A complete collection of Board final decisions is posted on the DOL Web site and Board final decisions also are available in print form from the Clerk's office upon request and through various commercial vendors providing research services. The Board notes that copies of its final decisions are included in the Board docket, which is maintained in a system of records (DOL/ECAB–1) covered by the Privacy Act. Release of ECAB decisions are permitted in accordance with the DOL/ECAB–1's routine use provisions. *See* 67 Fed. Reg. 16867 (April 8, 2002).

*Section 501.9 Representation; Appearances and Fees*

Section 501.9 incorporates and expands upon information currently contained in section 501.11. This proposed section defines representation in paragraph (a) and notes that a Representative may be either an attorney or non-attorney, but that representation by former DOL employees and judges is governed by the Department's ethics regulations. Paragraph (b) states that an Appellant must file a written authorization with the Board for any Representative. Paragraph (c) requires that changes of address be reported to the Clerk. Proposed paragraph (d) continues the current section 501.11(c) regarding rules of Representative debarment and debarment appeals.

Proposed section 501.9(e) amends the attorney and other fee provisions now found in section 501.11(d). Board experience has demonstrated that the statutory requirement that attorney and other fee requests must be approved by the Board for work before it, *see* 5 U.S.C. 8127, is often not followed. Therefore, in paragraph (e) the Board has clarified the requirements regarding review of all fee applications to ensure that Appellants are aware of and understand the mandatory requirement for Board consideration and approval of any fee application by a Representative or Counsel. Paragraph (e) also expands the list of factors that the Board will evaluate when reviewing fee requests. This section also provides information to those practicing before ECAB about the federal criminal law provision relating to Representatives in the FECA process, as failure to receive an approval from ECAB for collecting a fee may constitute a violation of federal law under 18 U.S.C. 292.

*Section 501.10 Number of Copies*

This section has been deleted and its requirements incorporated into section 501.4.

*Section 501.11 Appearances*

This section has been deleted and its requirements incorporated into section 501.9.

*Section 501.12 Intervention*

This section has been deleted in its entirety. The intervention process, used only occasionally by OWCP prior to the 1989 transfer of Panama Canal Commission cases to the OWCP, has not been utilized in recent years and is deleted as unnecessary.

*Section 501.13 Place of Proceedings*

This section has been deleted and its requirements incorporated into section 501.3.

## III. Administrative Requirements for the Proposed Rulemaking

*Executive Order 12866*

The Office of Management and Budget has not reviewed this proposed rule because it is not economically significant. This proposed rule will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs; nor will it have an annual effect on the economy of $100 million or more; nor will it adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in any material way. Furthermore, it does not raise a novel legal or policy issue arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order.

*Regulatory Flexibility Act of 1980*

This proposed rule has been reviewed in accordance with the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612. The Department has concluded that the rule does not involve regulatory and informational requirements regarding businesses, organizations, and governmental jurisdictions subject to regulation.

*Paperwork Reduction Act (PRA)*

The Department certifies that this proposed rule has been assessed in accordance with the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA). The Department concludes that the requirements of the PRA do not apply to this rulemaking, as this rulemaking involves administrative actions to which the Federal government is a party and that occur after an administrative case file has been opened regarding a particular individual. *See* 5 CFR 1320.4(a)(2), (c).

*The National Environmental Policy Act of 1969*

The Department certifies that this proposed rule has been assessed in accordance with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA). The Department concludes that NEPA requirements do not apply to this rulemaking because this proposed rule includes no provisions impacting the maintenance, preservation or enhancement of a healthful environment.

*Federal Regulations and Policies on Families*

The Department has reviewed this proposed rule in accordance with the requirements of section 654 of the Treasury and General Government Appropriations Act of 1999, 5 U.S.C. 601 note. These proposed regulations were not found to have a potential negative affect on family well-being as it is defined thereunder.

*Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The Department certifies that this proposed rule has been assessed regarding environmental health risks and safety risks that may disproportionately affect children. These proposed regulations were not found to have a potential negative affect on the health or safety of children.

*Unfunded Mandates Reform Act of 1995 and Executive Order 13132*

The Department has reviewed this proposed rule in accordance with the requirements of Exec. Order No. 13132, 64 Fed. Reg 43,225 (Aug. 10, 1999) and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* and has found no potential or substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. As there is no Federal mandate contained herein that could result in increased expenditures by State, local or tribal governments or by the private sector, the Department has not prepared a budgetary impact statement.

*Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

The Department has reviewed this proposed rule in accordance with Exec. Order 13,175, 65 FR 67,249 (Nov. 9, 2000), and has determined that it does not have ''tribal implications.'' The proposed rule does not ''have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

*Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights*

The Department has reviewed this proposed rule in accordance with Exec. Order 12630, 53 FR 8859 (Mar. 15, 1988) and has determined that it does not contain any ''policies that have takings implications'' in regard to the ''licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property.''

*Executive Order 13211: Energy Supply, Distribution, or Use*

The Department has reviewed this proposed regulation and has determined that the provisions of Exec. Order 13211, 66 FR 28355 (May 18, 2001) are not applicable as this is not a significant regulatory action and there are no direct or implied effects on energy supply, distribution, or use.

*The Privacy Act of 1974, 5 U.S.C. 552a, as Amended*

The Department has reviewed these proposed rules under the Privacy Act, 5 U.S.C. 552a, and has determined that this proposed rule will not require that any new information be processed, filed or collected during an appeal before the Board. Case files will continue to be released or not released consistent with the provisions of the Privacy Act and current published systems of record notices. Therefore, the Department has determined this proposed rule would not require revision of the current Privacy Act System of Records, DOL/GOVT–1, Office of Workers' Compensation Programs, Federal Employees' Compensation Act File, 67 Fed. Reg. 16826 (April 8, 2002) and DOL/ECAB–1, Employees' Compensation Appeals Board Docket Records, 67 Fed. Reg. 16867 (April 8, 2002).

*Clarity of This Regulation*

Executive Order 12866, 58 FR 51735 (September 30, 1993), and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. The Department invites comments on how to make this proposed rule easier to understand.

**List of Subjects in 20 CFR Part 501**

Rules of Procedure for practice before the Employees' Compensation Appeals Board, including definitions; scope and applicability of rules; composition and jurisdiction; notice of appeal; case record, inspection and submission of pleadings and motions; oral argument; decisions and orders; petitions for reconsideration; clerk, docket and records; and representation, appearances and fees.

## IV. Instructions for Providing Comments

*APA Requirements for Notice and Comment*

The majority of changes proposed here consist of amendments to rules of agency organization, procedure and practice, and consequently are exempt from the notice and public comment requirements of the Administrative Procedures Act, *see* 5 U.S.C. 553(b)(3)(A). However, the Board and the Department wish to provide the public with an opportunity to submit comments on any aspect of the entire proposed rule.

*Methods of Filing Comments*

Please submit only one copy of your comments via any of the methods noted in the addresses section. All submissions received must include the agency name, as well as RIN 1290–AA22. Also, please note that due to security concerns, postal mail delivery in Washington, DC may be delayed. Therefore, in order to ensure that comments are received on time, the Department encourages the public to submit comments via the Internet as indicated above.

*Publication of Comments Submitted Electronically*

Please be advised that the Department will post all comments received on *http://www.regulations.gov* without making any change to the comments, including any personal information provided. The *http://www.regulations.gov* Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. Therefore, the Department recommends that commenters safeguard their personal information by not including Social Security Numbers, personal addresses, telephone numbers, and e-mail addresses in comments. It is the responsibility of the commenter to safeguard his or her information.

*Rulemaking Docket*

In addition to the electronic comments available on *http://www.regulations.gov,* the Department will make all the comments it receives available for public inspection during normal business hours at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of the proposed rule available, upon request, in large print or electronic file on computer disc. The Department will consider providing the proposed rule in other formats upon request. To schedule an appointment to review the comments and/or obtain the proposed rule in an alternate format, contact the office of Alec J. Koromilas, Chairman and Chief Judge, Employees' Compensation Appeals Board at (202) 693–6406 (VOICE)(this is not a toll-free number) or (877) 889–5627 (TTY/TDD). You may also contact Chairman Koromilas' office at the address listed above.

Signed at Washington, DC, on June 16, 2008.

**Howard M. Radzely,**

*Deputy Secretary, U.S. Department of Labor.*

For the reasons stated in the preamble, the Department of Labor proposes to revise 20 CFR part 501 to read as follows:

## PART 20—THE EMPLOYEES' COMPENSATION APPEALS BOARD—RULES OF PROCEDURE

Sec.

501.1 Definitions
501.2 Scope and Applicability of Rules; Composition and Jurisdiction of the Board
501.3 Notice of Appeal
501.4 Case Record; Inspection; Submission of Pleadings and Motions
501.5 Oral Argument
501.6 Decisions and Orders
501.7 Petition for Reconsideration
501.8 Clerk of the Office of the Appellate Boards; Docket of Proceedings; Records
501.9 Representation; Appearances and Fees

**Authority:** 5 U.S.C. 8101 *et seq.*

### § 501.1 Definitions.

(a) *FECA* means the Federal Employees' Compensation Act, 5 U.S.C. 8145, and any statutory extension or application thereof.

(b) *The Board* means the Employees' Compensation Appeals Board.

(c) *Chief Judge and Chairman of the Board* means the Chairman of the Employees' Compensation Appeals Board.

(d) *Judge or Alternate Judge* means a member designated and appointed by the Secretary of Labor with authority to hear and make final decisions on appeals taken from determinations and awards by the OWCP in claims arising under the FECA.

(e) *OWCP* means the Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor.

(f) *Director* means the Director of the Office of Workers' Compensation Programs or a person delegated authority to perform the functions of the Director. The Director of OWCP is represented before the Board by an attorney designated by the Solicitor of Labor.

(g) *Appellant* means any person adversely affected by a final decision or order of the OWCP who files an appeal to the Board.

(h) *Representative* means an individual properly authorized by an Appellant in writing to act for the Appellant in connection with an appeal before the Board. The Representative may be any individual or an attorney, who is a member in good standing of the bar of the Supreme Court of the United States or the highest court of any State, territory or the District of Columbia.

(i) *Decision,* as prescribed by 5 U.S.C. 8149 of the FECA, means the final determinative action made by the Board on appeal of a claim.

(j) *Clerk or Office of the Clerk* means Clerk of the Office of the Appellate Boards.

### § 501.2 Scope and applicability of rules, composition and jurisdiction of the Board.

(a) The regulations in this part establish the Rules of Practice and Procedure governing the operation of the Employees' Compensation Appeals Board.

(b) The Board consists of three permanent judges, one of whom is designated as Chief Judge and Chairman of the Board, and such alternate judges as are appointed by the Secretary of Labor. The Chief Judge is the administrative officer of the Board. The functions of the Board are quasi-judicial. For organizational purposes, the Board is placed in the Office of the Secretary of Labor and sits in Washington, DC.

(c) The Board has jurisdiction to consider and decide appeals from final decisions of OWCP in any case arising under the FECA. The Board may review all relevant questions of law, fact and exercises of discretion (or failure to exercise discretion) in such cases.

(1) The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.

(2) There will be no appeal with respect to any interlocutory matter decided (or not decided) by OWCP during the pendency of a case.

(3) The Board and OWCP may not exercise simultaneous jurisdiction over the same issue in a case on appeal. Following the docketing of an appeal before the Board, OWCP does not retain jurisdiction to render a further decision regarding the issue on appeal until after the Board relinquishes jurisdiction.

### § 501.3 Notice of appeal.

(a) *Who may file.* Any person adversely affected by a final decision of the Director, or his or her authorized Representative, may file for review of such decision by the Board.

(b) *Place of filing.* The notice of appeal shall be filed with the Clerk at 200 Constitution Avenue, NW., Washington, DC 20210.

(c) *Content of Notice of Appeal.* A notice of appeal shall contain the following information:

(1) Date of Appeal.

(2) Full name, address and telephone number of the Appellant and the full name of any deceased employee on whose behalf an appeal is taken. In addition, the Appellant must provide a signed authorization identifying the full name, address and telephone number of his or her Representative, if applicable.

(3) Employing establishment, date, description and the place of the injury.

(4) Date and Case File Number assigned by OWCP concerning the decision being appealed to the Board.

(5) A statement explaining Appellant's disagreement with OWCP's decision and stating the factual and/or legal argument in favor of the appeal.

(6) Signature: An Appellant must sign the notice of appeal.

(d) *Substitution of Appellant:* Should the Appellant die after having filed an appeal with the Board, the appeal may proceed to decision provided there is the substitution of a proper Appellant who requests that the appeal proceed to decision by the Board.

(e) *Time limitations for filing.* Any notice of appeal must be filed within 180 days from the date of issuance of a decision of the OWCP. The Board maintains discretion to extend the time period for filing an appeal if an applicant demonstrates compelling circumstances. Compelling circumstances means circumstances beyond the Appellant's control, not including any delay caused by the failure of an individual to exercise due diligence in submitting a notice of appeal.

(f) *Date of Filing.* A notice of appeal complying with paragraph (c) is considered to have been filed only if received by the Clerk by the close of business within the period specified under paragraph (e).

(1) *Date of Mailing.* If the notice of appeal is sent by United States Mail and use of the date of delivery as the date of filing would result in a loss of appeal rights, the appeal will be considered to have been filed as of the date of mailing. The date appearing on the U.S. Postal Service postmark (when available and legible) shall be prima facie evidence of the date of mailing. If there is no such postmark or it is not legible, other evidence, such as, but not limited to, certified mail receipts, certificate of service and affidavits, may be used to establish the mailing date. If a notice of appeal is delivered or sent by means other than United States Mail, including commercial delivery, personal delivery or fax, the notice is deemed to be received when received by the Clerk.

(2) In computing the date of filing, the 180 day time period for filing an appeal

begins to run on the day following the date of the OWCP decision. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or Federal holiday, in which event the period runs to the close of the next business day.

(g) *Failure To Timely File a Notice of Appeal.* The failure of an Appellant or Representative to file an appeal with the Board within the period specified under paragraph (e) of this section, including any extensions granted by the Board in its discretion based upon compelling circumstances, will foreclose all right to review. The Board will dismiss any untimely appeal for lack of jurisdiction.

(h) *Incomplete Notice of Appeal.* Any timely notice of appeal that does not contain the information specified in paragraph (c) of this section will be considered incomplete. On receipt by the Board, the Clerk will inform Appellant of the deficiencies in the notice of appeal and specify a reasonable time to submit the requisite information. Such appeal will be dismissed unless Appellant provides the requisite information in the time specified by the Clerk.

**§ 501.4 Case record, inspection, submission of pleadings, and motions.**

(a) *Service on OWCP and Transmission of OWCP Case Record.* The Board shall serve upon the Director a copy of each notice of appeal and accompanying documents. Within 60 days from the date of such service, the Director shall provide to the Board the record of the OWCP proceeding to which the notice refers. On application of the Director, the Board may, in its discretion, extend the time period for submittal of the OWCP case record.

(b) *Inspection of Record.* The case record on appeal is an official record of the OWCP.

(1) Upon written application to the Clerk, an Appellant may request inspection of the OWCP case record. At the discretion of the Board, the OWCP case record may either be made available in the Office of the Clerk of the Appellate Boards for inspection by the Appellant, or the request may be forwarded to the Director so that OWCP may make a copy of the OWCP case record and forward this copy to the Appellant. Inspection of the papers and documents included in the OWCP case record of any appeal pending before the Board will be permitted or denied in accordance with 5 CFR 10.10 to 10.13. The Chief Judge (or his or her designee) shall serve as the disclosure officer for purposes of Appendix A to 29 CFR parts 70 and 71.

(2) Copies of the documents generated in the course of the appeal before the Board will be provided to the Appellant and Appellant's Representative by the Clerk. If the Appellant needs additional copies of such documents while the appeal is pending, the Appellant may obtain this information by contacting the Clerk. Pleadings and motions filed during the appeal in proceedings before the Board will be made part of the official case record of the OWCP.

(c) *Pleadings.* The Appellant, the Appellant's Representative and the Director may file pleadings supporting their position and presenting information, including but not limited to briefs, memoranda of law, memoranda of justification, and optional form AB–1. All pleadings filed must contain the docket number and be filed with the Clerk. The Clerk will issue directions specifying the time allowed for any responses and replies.

(1) The Clerk will distribute copies of any pleading received by the Clerk to ensure that the Appellant, his or her Representative and the Director receive all pleadings. Any pleading should be submitted within 60 days of the filing of an appeal. The Board may, in its discretion, extend the time period for the submittal of any pleading.

(2) Proceedings before the Board are informal and there is no requirement that any pleading be filed. Failure to submit a pleading or to timely submit a pleading does not prejudice the rights of either the Appellant or the Director.

(3) Upon receipt of a pleading, the Appellant and the Director will have the opportunity to submit a response to the Board.

(d) *Motions.* Motions are requests for the Board to take specific action in a pending appeal. Motions include, but are not limited to, motions to dismiss, affirm the decision below, remand, request a substitution, request an extension of time, or other such matter as may be brought before the Board. Motions may be filed by the Appellant, the Appellant's Representative and the Director. The motion must be in writing, contain the docket number, state the relief requested and the basis for the relief requested, and be filed with the Clerk. Any motion received will be sent by the Clerk to ensure that the Appellant, his or her Representative and the Director receive all motions. The Clerk will issue directions specifying the timing of any responses and replies. The Board also may act on its own to issue direction in pending appeals, stating the basis for its determination.

(e) *Number of Copies.* All filings with the Board, including any notice of appeal, pleading, or motion shall include an original and two (2) legible copies.

**§ 501.5 Oral argument.**

(a) *Oral argument.* Oral argument may be held in the discretion of the Board, on its own determination or on application by Appellant or the Director.

(b) *Request.* A request for oral argument must be submitted in writing to the Clerk. The application must specify the issue(s) to be argued and provide a statement supporting the need for oral argument. The request must be made no later than 60 days after the filing of an appeal. Any appeal in which a request for oral argument is not granted by the Board will proceed to a decision based on the case record and any pleadings submitted.

(c) *Notice of Argument.* If a request for oral argument is granted, the Clerk will notify the Appellant and the Director at least 30 days before the date set for argument. The notice of oral argument will state the issues that the Board has determined will be heard.

(d) *Time allowed.* Appellant and any Representative for the Director shall be allowed no more than 30 minutes to present oral argument. The Board may, in its discretion, extend the time allowed.

(e) *Appearances.* An Appellant may appear at oral argument before the Board or designate a Representative. Argument shall be presented by the Appellant or a Representative, not both. The Director may be represented by an attorney with the Solicitor of Labor. Argument is limited to the evidence of record on appeal.

(f) *Location.* Oral argument is heard before the Board only in Washington, DC. The Board does not reimburse costs associated with attending oral argument.

(g) *Continuance.* Once oral argument has been scheduled by the Board, a continuance will not be granted except on a showing of good cause. Good cause may include extreme hardship or where attendance by an Appellant or Representative is mandated at a previously scheduled judicial proceeding. Any request for continuance must be received by the Board at least 15 days before the date scheduled for oral argument and be served by the requester upon Appellant and the Director. No request for a second continuance will be entertained by the Board. In such case, the appeal will proceed to a decision based on the case record. The Board may reschedule or cancel oral argument on its own motion at any time.

(h) *Nonappearance.* The absence of an Appellant, his or her Representative, or

the Director at the time and place set for oral argument will not delay the Board's resolution of an appeal. In such event, the Board may, in its discretion, reschedule oral argument, or cancel oral argument and treat the case as submitted on the case record.

**§ 501.6 Decisions and orders.**

(a) *Decisions.* A decision of the Board will contain a written opinion setting forth the reasons for the action taken and an appropriate order. The decision is based on the case record, all pleadings and any oral argument. The decision may consist of an affirmance, reversal or remand for further development of the evidence, or other appropriate action.

(b) *Panels.* A decision of not less than two judges will be the decision of the Board.

(c) *Issuance.* The date of the Board's decision is the date of issuance or such date as determined by the Board. Issuance is not determined by the postmark on any letter containing the decision or the date of actual receipt by Appellant or the Director.

(d) *Finality.* The decisions and orders of the Board are final as to the subject matter appealed, and such decisions and orders are not subject to review, except by the Board. The decisions and orders of the Board will be final upon the expiration of 30 days from the date of issuance unless the Board has fixed a different period of time therein. Following the expiration of that time, the Board no longer retains jurisdiction over the appeal unless a timely petition for reconsideration is submitted and granted.

(e) *Dispositive Orders.* The Board may dispose of an appeal on a procedural basis by issuing an appropriate order disposing of part or all of a case prior to reaching the merits of the appeal. The Board may proceed to an order on its own or on the written motion of Appellant or the Director.

(f) *Service.* The Board will send its decisions and orders to the Appellant, his or her Representative and the Director at the time of issuance.

**§ 501.7 Petition for reconsideration.**

(a) *Time for filing.* The Appellant or the Director may file a petition for reconsideration of a decision or order issued by the Board within 30 days of the date of issuance, unless another time period is specified in the Board's order.

(b) *Where to file.* The petition must be filed with the Clerk. Copies will be sent by the Clerk to the Director, the Appellant and his or her Representative in the time period specified by the Board.

(c) *Content of Petition.* The petition must be in writing. The petition must contain the docket number, specify the matters claimed to have been erroneously decided, provide a statement of the facts upon which the petitioner relies, and a discussion of applicable law. New evidence will not be considered by the Board in a petition for reconsideration.

(d) *Panel.* The panel of judges who heard and decided the appeal will rule on the petition for reconsideration. If any member of the original panel is unavailable, the Chief Judge may designate a new panel member. The decision or order of the Board will stand as final unless vacated or modified by the vote of at least two members of the reconsideration panel.

(e) *Answer.* Upon the filing of a petition for reconsideration, Appellant or the Director may file an answer to the petition within such time as fixed by the Board.

(f) *Oral Argument and Decision on Reconsideration.* An oral argument may be allowed at the discretion of the Board upon application of the Appellant or Director or the Board may proceed to address the matter upon the papers filed. The Board shall grant or deny the petition for reconsideration and issue such orders as it deems appropriate.

**§ 501.8 Clerk of the office of the appellate boards, docket of proceedings, records.**

(a) *Location and Business Hours.* The Office of the Clerk of the Appellate Boards is located at 200 Constitution Avenue, NW., Washington, DC 20210. The Office of the Clerk is open during business hours on all days except Saturdays, Sundays and Federal holidays, from 8:30 a.m. to 5 p.m.

(b) *Docket.* The Clerk will maintain a docket containing a record of all proceedings before the Board. Each docketed appeal will be assigned a number in chronological order based upon the date on which the notice of appeal is received. While the Board generally hears appeals in the order docketed, the Board retains discretion to change the order in which a particular appeal will be considered. The Clerk will prepare a calendar of cases submitted or awaiting oral argument and such other records as may be required by the Board.

(c) *Publication of Decisions.* Final decisions of the Board will be published in such form as to be readily available for inspection by the general public.

**§ 501.9 Representation, appearances and fees.**

(a) *Representation.* In any proceeding before the Board, an Appellant may appear in person or by appointing a duly authorized individual as his or her Representative.

(1) *Counsel.* The designated Representative may be an attorney who has been admitted to practice before the Supreme Court of the United States or the highest court of any state, the District of Columbia, or a United States territory and who is in good standing with that bar.

(2) *Lay Representative.* A non-attorney Representative may represent an Appellant before the Board. He or she may be an accredited Representative of an employee organization.

(3) *Former members of the Board and other employees of the Department of Labor.* A former judge of the Board is not allowed to participate as counsel or other Representative before the Board in any proceeding until two years from the termination of his or her status as a judge of the Board. The practice of a former judge or other former employee of the Department of Labor is governed by 29 CFR part 0, subpart B.

(b) *Appearance.* No individual may appear as a Representative in a proceeding before the Board without first filing with the Clerk a written authorization signed by the Appellant to be represented. When accepted by the Board, such Representative will continue to be recognized unless the Representative withdraws or abandons such capacity or the Appellant directs otherwise.

(c) *Change of Address.* Each Appellant and Representative authorized to appear before the Board must give the Clerk written notice of any change to the address or telephone number of the Appellant or Representative. Such notice must identify the docket number and name of each pending appeal for that Appellant, or, in the case of a Representative, in which he or she is a Representative before the Board. Absent such notice, the mailing of documents to the address most recently provided to the Board will be fully effective.

(d) *Debarment of Counsel or Representative.* In any proceeding, whenever the Board finds that a person acting as counsel or other Representative or the Director is guilty of unethical or unprofessional conduct, the Board may order that such person be excluded from further acting as counsel or Representative of an Appellant in such proceeding. Such order may be appealed to the Secretary of Labor or his or her designee, but proceedings before the Board will not be delayed or suspended pending disposition of such appeal. However, the Board may suspend the proceeding of an appeal for

a reasonable time for the purpose of enabling Appellant or the Director to obtain different counsel or other Representative. Whenever the Board has issued an order precluding a person from further acting as counsel or Representative in a proceeding, the Board will, within a reasonable time, submit to the Secretary of Labor or his or her designee a report of the facts and circumstances surrounding the issuance of such order. The Board will recommend what action the Secretary of Labor should take in regard to the appearance of such person as counsel or Representative in other proceedings before the Board. Before any action is taken debarring a person as counsel or Representative from other proceedings, he or she will be furnished notice and the opportunity to be heard on the matter.

(e) *Fees for Attorney, Representative, or Other Services.* No claim for a fee for legal or other service in connection with a proceeding before the Board is valid unless approved by the Board. Under 18 U.S.C. 292, collecting a fee without the approval of the Board may constitute a misdemeanor, subject to fine or imprisonment for up to a year or both. No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. No fee for service will be approved except upon written application to the Clerk, supported by a statement of the extent and nature of the necessary work performed before the Board on behalf of the Appellant. The fee application will be served by the Clerk on the Appellant and a time set in which a response may be filed. Except where such fee is *de minimis*, the fee request will be evaluated with consideration of the following factors:

(1) Usefulness of the Representative's services;

(2) The nature and complexity of the appeal;

(3) The capacity in which the Representative has appeared;

(4) The actual time spent in connection with the Board appeal; and

(5) Customary local charges for similar services.

[FR Doc. E8–13910 Filed 6–19–08; 8:45 am]

BILLING CODE 4510–23–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R07–OAR–2008–0392; FRL–8582–1]**

### Approval and Promulgation of Implementation Plans; State of Missouri

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve a request to amend the Missouri State Implementation Plan (SIP) to include revisions to the Kansas City Solvent Metal Cleaning rule. The revisions to this rule include consolidating exemptions in the applicability section, adding new exemptions, adding definitions of new and previously undefined terms, and clarifying rule language regarding operating procedure requirements for spray gun cleaners and air-tight and airless cleaning systems. This revision will ensure consistency between the state and the federally-approved rules.

**DATES:** Comments on this proposed action must be received in writing by July 21, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R07–OAR–2008–0392 by mail to Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Amy Algoe-Eakin at (913) 551–7942, or by e-mail at *algoe-eakin.amy@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: June 9, 2008.

**John B. Askew,**

*Regional Administrator, Region 7.*

[FR Doc. E8–13756 Filed 6–19–08; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R07–OAR–2008–0342; FRL–8581–8]**

### Approval and Promulgation of Implementation Plans; State of Missouri

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve a State Implementation Plan (SIP) to revise the sulfur dioxide ($SO_2$) emissions rates and averaging times for Kansas City Power & Light's Hawthorn Plant and Montrose Station in Missouri rule, Restriction of Emission of Sulfur Compounds. Previous changes to this rule were disapproved in 2006 because EPA was concerned that the averaging times for the rates at these units had been dramatically increased from a 3-hour average to an annual average and that the revised averaging times were not demonstrated by the state to be protective of the short-term (3- and 24-hour) sulfur dioxide ($SO_2$) National Ambient Air Quality Standard (NAAQS). EPA believes that the recent changes, which EPA is now proposing to approve, have been shown by Missouri to be protective of the short-term $SO_2$ NAAQS. This revision will ensure consistency between the state and the federally-approved rules.

**DATES:** Comments on this proposed action must be received in writing by July 21, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R07–OAR–2008–0342, by mail to Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also

be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Amy Algoe-Eakin at (913) 551–7942, or by e-mail at *algoe-eakin.amy@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: June 9, 2008.

**John B. Askew,**

*Regional Administrator, Region 7.*

[FR Doc. E8–13839 Filed 6–19–08; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Part 67

**[Docket No. FEMA–B–7786]**

### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule.

**SUMMARY:** Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

**DATES:** Comments are to be submitted on or before September 18, 2008.

**ADDRESSES:** The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7786, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov*.

**FOR FURTHER INFORMATION CONTACT:** William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov*.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

*Administrative Procedure Act Statement.* This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

*National Environmental Policy Act.* This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

*Executive Order 12866, Regulatory Planning and Review.* This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

*Executive Order 13132, Federalism.* This proposed rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This proposed rule meets the applicable standards of Executive Order 12988.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.4 [Amended]**

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

| Flooding source(s) | Location of referenced elevation ** | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| **Lauderdale County, Alabama, and Incorporated Areas** | | | | |
| Tennessee River (Navigation Channel). | Approximately 981 feet upstream of the intersection of Sweetwater Creek and XS B of Tennessee River. | +431 | +432 | City of Florence. |
| | Approximately 2238 feet upstream of the intersection of Tennessee River and XS D of Tennessee River. | +431 | +435 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

**ADDRESSES**

**City of Florence**
Maps are available for inspection at 110 West College Street, Florence, AL 35630.

| Flooding source(s) | Location of referenced elevation ** | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| **Leavenworth County, Kansas, and Incorporated Areas** | | | | |
| Stranger Creek | At Highway 32 | +798 | +796 | Unincorporated Areas of Leavenworth County, City of Easton, City of Linwood. |
| | At Tonganoxie Road | None | +842 | |
| | At Millwood Road | None | +914 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

**ADDRESSES**

**City of Easton**
Maps are available for inspection at City Hall, 300 W. Riley, Easton, KS 66020.

**City of Linwood**
Maps are available for inspection at City Hall, 306 Main Street, Linwood, KS 66052.

**Unincorporated Areas of Leavenworth County**
Maps are available for inspection at Leavenworth County Courthouse, 4th and Walnut, Leavenworth, KS 66048.

| Flooding source(s) | Location of referenced elevation ** | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| **Vermilion Parish, Louisiana, and Incorporated Areas** | | | | |
| Gulf of Mexico | Base Flood Elevation changes ranging from 10 to 13 feet in the form of AE and VE zones have been made. | +11 | +10–13 | Town of Erath. |
| Gulf of Mexico | Base Flood Elevation changes ranging from 9 to 11 feet in the form of AE and VE zones have been made. | +9–11 | +9–11 | Town of Delcambre. |
| Gulf of Mexico | Base Flood Elevation changes of 7 feet in the form of VE zones have been made. | None | +7 | Town of Gueydan. |
| Gulf of Mexico | Base Flood Elevations changes ranging from 11 to 18 feet in the form of AE and VE zones have been made. | +11–19 | +11–18 | Unincorporated Areas of Vermilion Parish. |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

| Flooding source(s) | Location of referenced elevation ** | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

**ADDRESSES**

**Town of Erath**
Maps are available for inspection at 115 West Edwards Street, Erath, LA 70533.

**Town of Delcambre**
Maps are available for inspection at 107 North Railroad, Delcambre, LA 70528.

**Town of Gueydan**
Maps are available for inspection at 600 Main Street, Gueydan, LA 70542.

**Unincorporated Areas of Vermilion Parish**
Maps are available for inspection at 100 N. State Street, Suite 200, Abbeville, LA 70510.

**Bristol County, Massachusetts, and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| Buzzards Bay ..... | Approximately 1,650 feet East of intersection of River Road and Redwing Lane. | +13 | +24 | Town of Dartmouth, Town of Westport. |
| | Approximately 875 feet south from end of Club House Drive. | +31 | +24 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

**ADDRESSES**

**Town of Dartmouth**
Maps are available for inspection at Town Hall, 400 Slocum Road, Dartmouth, MA 02747.

**Town of Westport**
Maps are available for inspection at Town Hall, 816 Main Road, Westport, MA 02790.

**Plymouth County, Massachusetts, and Incorporated Areas**

| | | | | |
|---|---|---|---|---|
| Atlantic Ocean ..... | Approximately 150 feet south of intersection of Brant Beach Avenue and Ocean View Avenue. | +17 | +19 | Town of Hull, Town of Mattapoisett. |
| | Approximately 210 feet southeast of intersection of Highland Avenue and Mount Pleasant Way. | +9 | +33 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

**ADDRESSES**

**Town of Hull**
Maps are available for inspection at Town Hall, 253 Atlantic Avenue, Hull, MA 02045.

**Town of Mattapoisett**
Maps are available for inspection at Town Hall, 16 Main Street, Mattapoisett, MA 02739.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: June 10, 2008.

**David I. Maurstad,**

*Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. E8–13932 Filed 6–19–08; 8:45 am]

**BILLING CODE 9110–12–P**

# Notices

Federal Register
Vol. 73, No. 120
Friday, June 20, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Ravalli County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Ravalli County Resource Advisory Committee will be meeting to go on a field trip. The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). The meeting is open to the public.

**DATES:** The field trip will start on June 24, 2008, 6 p.m.

**ADDRESSES:** The field trip will meet at the Bitterroot National Forest, 1801 N. First Street, Hamilton, Montana in the back parking lot to team up for the car pool. Send written comments to Daniel C. Ritter, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *dritter@fs.fed.us.*

**FOR FURTHER INFORMATION CONTACT:** Daniel G. Ritter, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: June 12, 2008.

**Barry Paulson,**

*Deputy Forest Supervisor.*

[FR Doc. E8–13983 Filed 6–19–08; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Nebraska National Forest, Nebraska & South Dakota; Black-Tailed Prairie Dog (Cynomys ludovicianus) Management on the Nebraska National Forest and Associated Units

**AGENCY:** Forest Service, USDA.

**ACTION:** Second revised notice of intent to prepare an environmental impact statement.

**SUMMARY:** This project would amend current management direction in the Nebraska National Forest Land and Resource Management Plan (LRMP) for black-tailed prairie dog *(Cynomys ludovicianus)* management on the Nebraska National Forest and associated units (NNF). The proposed LRMP amendment is to meet various multiple use objectives by: (1) Specifing the desired range of acres of prairie dog colonies that would be provided on the Nebraska National Forest and associated units; and (2) allowing the use of rodenticides if the acreage exceeds the desired range and for multiple use objectives. A Notice of Intent (NOI) to supplement the 2002 LRMP environmental impact statement (EIS) for this project was published September 29, 2006 (71 FR 57460–57462). On February 28, 2007 (72 FR 8962) a revised NOI was published indicating that the Agency would not be preparing a supplement to the 2002 LRMP EIS but would be preparing a separate environmental impact statement for black-tailed prairie dog *(Cynomys ludovicianus)* management on the Nebraska National Forest and associated units. This EIS would tier to 2002 LRMP. More than six months have elapsed since the projected FEIS date in that original NOI. Also, the responsible official has changed to Jane Darnell, Forest Supervisor (no change in title). This revised NOI is being issued to update the project schedule and responsible official.

**DATES:** The Notice of Availability of the draft environmental impact statement was published in the **Federal Register** on June 8, 2007 (72 FR 31822). The final environmental impact statement is expected in July, 2008. No further formal public comment opportunities will be offered on this project.

**FOR FURTHER INFORMATION CONTACT:** Mike McNeill, Team Leader, USDA Forest Service, at 1801 Hwy 18 Truck Bypass PO Box 732, Hot Springs, South Dakota 57747, or call (605) 745–4107.

**SUPPLEMENTARY INFORMATION:**

*Purpose and Need for Action:* We conducted an interdiscinplinary review of new information and changed circumstances from the original LRMP FEIS including prolonged drought conditions, changes in praire dog numbers and distribution, and related concerns about resulting vegetation and soil conditions. The environmental impact statement will disclose the environmental effects of the proposed action while still providing: (1) Sufficient habitat to support a self-sustaining population of black-footed ferrets that contributes to the overall recovery of the species; and (2) sufficient habitat to maintain a well-distributed population of black-tailed prairie dogs and other associated species across the national grasslands.

*Proposed Action:* The proposed action is to amend current management direction in the LRMP to meet various multiple use objectives by: (1) Specifying the desired range of acres of prairie dog colonies that will be provided on the NNF; and (2) allowing use of rodenticide if the acreage exceeds the desired range and for multiple use objectives. This includes amending Chapter 1, Section H, Standard #1 which identifies a limited use of rodenticides.

*Issues:* Key issues include effects on black-tailed prairie dogs; effects on recovery of the endangered black-footed ferret; effects on other wildlife species associated with prairie dogs; effects on livestock grazing permittees; effects on vegetation cover, topsoil, and undesirable plant species; and costs and effectiveness of management strategies.

*Responsible Official*

The Responsible Official is Jane D. Darnell, Forest Supervisor, USDA Forest Service, 125 North Main Street, Chadron, Nebraska 69337.

*Nature of Decision To Be Made*

The Forest Service will decide whether or not to amend current management direction in the LRMP to meet various multiple use objectives by: (1) specifying the desired range of acres of prairie dog colonies that will be

provided on the NNF; and (2) allowing use of rodenticides if the acreage exceeds the desired range and for multiple use objectives.

*Public Comment*

Comments and input regarding the proposal were requested from the public, other groups and agencies via direct mailing on October 6, 2006. Additional comments were solicited during September 2006 and February 2007 via public notices and an additional direct mailing. The Draft EIS was issued for a 45-day public comment in June 2007. No further formal public comment opportunities will be offered on this project.

*Early Notice of Importance of Public Participation in Subsequent Environmental Review:* The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process.

First, the reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 regarding the specificity of comments.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

**Authority:** 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: June 13, 2008.

**Jane D. Darnell,**

*Forest Supervisor, Nebraska National Forest.*

[FR Doc. E8–13964 Filed 6–19–08; 8:45 am]

**BILLING CODE 3410–11–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions and Deletion

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and Deletion from the Procurement List.

**SUMMARY:** This action adds to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a service previously furnished by such agencies.

**EFFECTIVE DATE:** July 20, 2008.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

**SUPPLEMENTARY INFORMATION:**

### Additions

On March 28, April 18 and April 25, 2008 the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 FR16639; 21107; 22324) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and services and impact of the additions on the current or most recent contractors, the Committee has determined that the product and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. The action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

### End of Certification

Accordingly, the following product and services are added to the Procurement List:

**Product**

*Bag, Fecal Incontinent*

*NSN:* 6530–00–NSH–0045—Large
*NPA:* Work, Inc., North Quincy, MA
*Coverage:* C-List for the requirement of the Department of Veterans Affairs, National Acquisition Center, Hines, IL
*Contracting Activity:* Department of Veterans Affairs, National Acquisition Center, Hines, IL

**Services**

*Service Type/Location:* Custodial Services, Andersen Air Force Base, Basewide, APO AP, GU.
*NPA:* Able Industries of the Pacific, Santa Rita, GU.
*Contracting Activity:* U.S. Air Force, Anderson Air Force Base, 36th Contracting Squadron, APO AP, GU.
*Service Type/Location:* Mailroom Operations, Immigration & Customs Enforcement, 1100 Center Parkway (Camp Creek Business Center), 180 Spring Street, 2150 Park Lake Drive, Atlanta, GA.
*NPA:* WORKTEC, Jonesboro, GA.
*Contracting Activity:* U.S. Department of Homeland Security, Immigration and Customs Enforcement, Washington, DC.

### Deletion

On April 11, 2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 FR19808) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the service listed below are no longer suitable for procurement by the Federal Government under41 U.S.C. 46–48c and 41 CFR 51–2.4.

### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action should not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service deleted from the Procurement List.

**End of Certification**

Accordingly, the following service is deleted from the Procurement List:

**Service:**

*Service Type/Location:* Janitorial/Custodial, Curlew Conservation Center, Colville National Forest, Curlew, WA.
*NPA:* Ferry County Community Services, Republic, WA.
*Contracting Activity:* U.S. Department of Agriculture, Colville National Forest, Colville, WA.

**Kimberly M. Zeich,**

*Director, Program Operations.*

[FR Doc. E8–14026 Filed 6–19–08; 8:45 am]

**BILLING CODE 6353–01–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed Additions to the Procurement List.

**SUMMARY:** The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

*Comments Must be Received on or Before:* July 20, 2008.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT:** Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

**SUPPLEMENTARY INFORMATION:**

This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

**Regulatory Flexibility Act Certification**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

**End of Certification**

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

**Products**

Bulletin Rails
*NSN:* 7520–00–NIB–1801–48″, Natural Cork, Aluminum Frame.
*NSN:* 7520–00–NIB–1802—36″, Natural Cork, Aluminum Frame.
*NSN:* 7520–00–NIB–1803—24″, Natural Cork, Aluminum Frame.

Marker Board, Wall Mounted
*NSN:* 7110–00–NIB–0037—3′×2′, Combo Dry Erase, Cork Board, Oak Finish.
*NSN:* 7110–00–NIB–0038—24″×18″, Melamine, Dry Erase Board, Thin Aluminum Frame.
*NSN:* 7110–00–NIB–0042—24″×18″, Cork Board, Oak Finish.
*NSN:* 7110–00–NIB–0047—3′×2′, Fabric Board, Grey, Black Plastic Radius Corners.
*NSN:* 7110–00–NIB–0048—4—12″×12″, Cork, Panels w/Adhesive Backing (no frame).
*NSN:* 7110–00–NIB–0050—1″×3″, Cork Board, Vertical, Slim Line Oak Finish.
*NSN:* 7110–00–NIB–0060—5′×3′, Porcelain Magnetic Dry Erase Board, Thick Aluminum.
*NSN:* 7110–01–416–5198—24″×18″, Melamine, Dry Erase Board, Thin Aluminum.
*NSN:* 7195–01–235–4161—3′×2′, Cork Board, Oak Finish.
*Coverage:* A-List for the total Government requirement as specified by the General Services Administration.

Bulletin Board
*NSN:* 7195–01–218–2026—4′×3′, Cork Board, Oak Finish.

Marker Board, Wall Mounted
*NSN:* 7110–00–NIB–0028—24″×13″, Dry Erase, Cubicle Board, Aluminum.
*NSN:* 7110–00–NIB–0029—30″×18″, Dry Erase, Cubicle Board, Aluminum.
*NSN:* 7110–00–NIB–0030—30″×18″, Combo Dry Erase, Cubicle Color Cork Board, Aluminum.
*NSN:* 7110–00–NIB–0031—30″×18″, Cubicle Color Cork Board, Aluminum.
*NSN:* 7110–00–NIB–0032—30″×18″, Dry Erase, 1 mo. Calendar, Aluminum.
*NSN:* 7110–00–NIB–0039—4′×3′, Combo Dry Erase, Cork Board, Oak Finish.
*NSN:* 7110–00–NIB–0040—6′×4′, Melamine Dry Erase Magnetic, Thick Aluminum Frame.
*NSN:* 7110–00–NIB–0043—6′×4′, Porcelain, Dry Erase Magnetic, Thick Aluminum Frame.
*NSN:* 7110–00–NIB–0045—24″×18″, In/Out Board System, Thin Aluminum Frame.
*NSN:* 7110–00–NIB–0046—4′×3, Fabric Board, Black Plastic, Radius Corners.
*NSN:* 7110–00–NIB–0049—6′×4′, Cork Board, Thin Aluminum Frame.
*NSN:* 7110–00–NIB–0051—6′×4′, Cork Board, Oak Finish.
*Coverage:* B-List for the broad Government requirement as specified by the General Services Administration.
*NPA:* The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA.
*Contracting Activity:* General Service Administration, Federal Supply Service, National Furniture Acquisition Center, Arlington, VA.

Shredders, Paper
*NSN:* 7490–00–NIB–0009—Fellowes Model 970 Cross Cut.
*NSN:* 7490–00–NIB–0011—Fellowes Model 4000 Cross Cut.
*Coverage:* A-List for the total Government requirement as specified by the General Services Administration.
*NSN:* 7490–00–NIB–0010—Fellowes Model 4000 Strip Cut.
*Coverage:* B-List for the broad Government requirement as specified by the General Services Administration.
*NPA:* L.C. Industries for the Blind, Inc., Durham, NC.
*Contracting Activity:* General Services Administration, Office Supplies & Paper Products Acquisition Ctr, New York, NY.

SKILCRAFT Bath & Shower Scrubber & Refill
*NSN:* M.R. 1101—SKILCRAFT Bath & Shower Scrubber.
*NSN:* M.R. 1102—SKILCRAFT Bath & Shower Scrubber (Refill).
*NPA:* Industries for the Blind, Inc., West Allis, WI.
*Contracting Activity:* Defense Commissary Agency (DeCA), Fort Lee, VA.

**Services**

*Service Type/Location:* Custodial & Grounds Maintenance, Naval Operations Support Center, 1325 Helena Avenue, Helena, MT.
*NPA:* Helena Industries, Inc., Helena, MT.
*Contracting Activity:* Naval Facilities (NAVFAC)—Northwest, Silverdale, WA.

*Service Type/Location:* Custodial Services, Malmstrom Air Force Base, Basewide, Malstrom AFB, MT.
*NPA:* Skils'kin, Spokane, WA.
*Contracting Activity:* AFSPC Malmstrom, Malmstrom Air Force Base, MT.

*Service Type/Location:* Custodial Services, Navy Operational Support Center (NOSC), 1 Linsley, Plainville, CT.
*NPA:* Easter Seals Greater Hartford Rehabilitation Center, Inc., Hartford, CT.
*Contracting Activity:* Naval Facilities Engineering Command (NAVFAC)—Mid-Atlantic, PWD Portsmouth, Portsmouth, NH.

*Service Type/Location:* Custodial Services, Senate Employee Child Care Center, 321 Massachusetts Avenue, NE. Washington, DC.
*NPA:* Melwood Horticultural Training Center, Upper Marlboro, MD.
*Contracting Activity:* The Architect of the Capitol, AOC Procurement Division, Washington, DC.

*Service Type/Location:* Custodial Services, U.S. Post Office and Courthouse, 7th Ave. and Grant Street, Pittsburgh, PA.
*NPA:* Goodwill Commercial Services, Inc., Pittsburgh, PA.
*Contracting Activity:* General Services Administration, Public Buildings Service (3PK), Philadelphia, PA.

*Service Type/Location:* Facilities Management, Naval Surface Warfare Center, Acoustic Research Detachment (ARD), Bayview, ID.
*NPA:* Skookum Educational Programs, Bremerton, WA.
*Contracting Activity:* Naval Facilities Engineering Command (NAVFAC)—Silverdale, WA.

*Service Type/Location:* Document Destruction, Social Security Administration, 600 West Madison St, Chicago, IL.
*NPA:* Goodwill Industries of Southeastern Wisconsin, Inc, Milwaukee, WI.
*Contracting Activity:* Social Security Administration, Chicago, IL.

*Service Type/Location:* Document Management & Administrative Services, Fort Rucker, Fort Rucker, AL.
*NPA:* Lakeview Center, Inc., Pensacola, FL.
*Contracting Activity:* Department of the Army, Directorate of Contracting, Fort Rucker, AL.

*Service Type/Location(s):* Medical Transcription, VA Hudson Valley Health Care System, Montrose Campus, Route 9A, Montrose, NY; Castle Point Campus, Route 9D, Castle Point, NY.
*NPA:* National Telecommuting Institute, Inc., Boston, MA.
*Contracting Activity:* The Department of Veteran Affairs, VA Medical Center—Montrose Campus, Bronx, NY.

*Service Type/Location:* Recycling Service, Internal Revenue Service Headquarters, 1111 Constitution Avenue, NW., Washington, DC.
*NPA:* Didlake, Inc., Manassas, VA.
*Contracting Activity:* U.S. Department of the Treasury, Internal Revenue Service Headquarters, Oxon Hill, MD.

*Service Type/Location:* Vehicle Maintenance Services, Aberdeen Proving Ground, 4118 Susquehanna Ave, Aberdeen, MD.
*NPA:* PRIDE Industries, Roseville, CA.
*Contracting Activity:* General Services Administration, Federal Supply Service, Region 3 (3FPU), Philadelphia, PA.

*Service Type/Location:* Recycling Service (6 Locations): Public Works Department (PWD) Washington, Washington, DC; PWD Patuxent River, Patuxent River, MD; PWD North Potomac, Bethesda, MD; PWD Annapolis, Annapolis, MD; PWD South Potomac, Indian Head, MD and Dahlgren, VA; PWD Quantico, Quantico, VA.
*NPA:* Melwood Horticultural Training Center, Upper Marlboro, MD.
*Contracting Activity:* Naval Facilities Acquisition Command (NAVFAC)—Washington, Washington, DC.

**Kimberly M. Zeich,**

*Director, Program Operations.*

[FR Doc. E8–14027 Filed 6–19–08; 8:45 am]

**BILLING CODE 6353–01–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Notice Regarding Publication of Procurement List Proposed Additions; Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Notice Regarding Publication of Proposed Additions; Additions and Deletions to and from the Procurement List.

**Note:** The Committee for Purchase customarily publishes notices of proposed additions and deletions and final notices on Fridays for the convenience of the public. Publication of the Committee's public notices in Document Number—2008–13361(2) took place on Monday, 06–16–2008 instead of the customary date, Friday, 06–13–2008.

**Kimberly M. Zeich,**

*Director, Program Operations.*

[FR Doc. E8–14025 Filed 6–19–08; 8:45 am]

**BILLING CODE 6353–01–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* High Seas Fishing Permit Application Information.

*Form Number(s):* None.

*OMB Approval Number:* 0648–0304.

*Type of Request:* Regular submission.

*Burden Hours:* 100.

*Number of Respondents:* 200.

*Average Hours per Response:* 30 minutes.

*Needs and Uses:* United States (U.S.) vessels that fish on the high seas are required to possess a permit issued under the High Seas Fishing Compliance Act. The applicants must submit information to identify their vessels and intended fishing activities. The information is used to process applications and maintain a register of U.S. vessels authorized to fish on the high seas.

*Affected Public:* Business or other for-profit organizations.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: June 16, 2008.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E8–13907 Filed 6–19–08; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and

Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Southeast Region Vessel Identification Requirements.

*Form Number(s):* None.

*OMB Approval Number:* 0648–0358.

*Type of Request:* Regular submission.

*Burden Hours:* 7,331.

*Number of Respondents:* 9,774.

*Average Hours per Response:* 45 minutes.

*Needs and Uses:* The participants in the Federally-regulated Sargassum fishery in the Southeast Region of the United States are required to mark their fishing vessels (port and starboard sides of the deckhouse or hull, and weather deck) with the official identification number or some other form of identification. This identification is necessary to aid fishery enforcement activities and for purposes of gear identification concerning damage, loss, and civil proceedings.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* Annually.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: June 16, 2008.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E8–13908 Filed 6–19–08; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* National Youth Volunteering and Civic Engagement Survey.

*OMB Control Number:* 0607–0913.

*Form Number(s):* None.

*Type of Request:* Reinstatement, with change, of an expired collection.

*Burden Hours:* 2,000.

*Number of Respondents:* 8,000.

*Average Hours Per Response:* 15 minutes.

*Needs and Uses:* The purpose of this request for review is for the reinstatement of clearance for the National Youth Volunteering and Civic Engagement Survey (NYVCES). Although most questions remain the same from the initial submission, questions from the Civic Engagement Supplement to the Current Population Survey have been added at the request of the Corporation for National and Community Service (the Corporation).

Throughout the history of the United States, Americans have valued an ethic of service. Today, Americans of all ages, backgrounds, and abilities are donating their time and talents to schools, churches, hospitals, and local nonprofits in an effort to improve their communities and serve a purpose greater than themselves. According to data collected over the past 30 years by the U.S. Census Bureau and the Bureau of Labor Statistics, Americans ages 16 and older are volunteering at historically high rates, giving their time to help others by mentoring students, beautifying neighborhoods, restoring homes after disasters, and much, much more.

To deepen our understanding of volunteering among youth in America and to promote its growth, the Corporation has proposed conducting the 2008 NYVCES. This survey will be a continuation of the youth volunteering study conducted in 2005. At that time, Census collected information on volunteering and civic engagement from over 3,100 of the nation's youth ranging in age from 12 to 18 years old. As with the annual collection of adult volunteering activities, a recurring survey of this population will allow Census to track changes in the attitudes and behaviors of America's young people toward volunteering and civic engagement. Measuring the level of youth volunteering activities is critically important because volunteering is no longer just nice to do. It is a necessary aspect of meeting the most pressing needs facing our nation: crime, gangs, poverty, disasters, illiteracy, and homelessness.

Data collection activities for the 2008 NYVCES are scheduled to begin in the fall of 2008. Respondents will provide information on their participation in volunteering and civic engagement activities for the twelve-month period that includes the 2007–2008 academic year and the 2008 summer break. This reference period will be similar to the reference period used in the September Current Population Survey (CPS) Volunteer Supplement and the reference period used in the upcoming 2008 CPS Voting and Civic Engagement Supplement. The design of the survey, which includes questions also asked in the Volunteer and Voting and Civic Engagement Supplements, will allow for our evaluation of youth volunteering to be informed by the overall context of volunteering and civic engagement activities taking place across America by all age groups. All interviews will be conducted at the Census Bureau's Telephone Centers using Computer Assisted Telephone Interviewing (CATI) technology.

The chief purpose of the 2008 survey is to collect information on the motivations, attitudes, experiences, and demographics of youth in relation to volunteering, participation in school-based service and other forms of civic engagement, which will be utilized in promoting, managing, and evaluating volunteer participation at the national level for youth ranging in age from 12 to 18. A study of this rarely-evaluated segment of the volunteering population will provide important information to the Corporation, the federal agency responsible for providing national and community service opportunities for millions of Americans. For example, the Corporation's Learn and Serve America program encourages civic participation and volunteerism throughout the country by supporting service-learning programs that help more than one million young people, from kindergarten through college, meet community needs while improving their academic skills and learning the habits of good citizenship each year. Through the survey, Learn and Serve America will gain valuable information on teens' experience with and their attitudes towards service-learning, civic engagement, and volunteerism.

Not only can teens make positive contributions toward meeting community needs through their volunteer activities, the behaviors and attitudes toward volunteering and civic engagement during childhood are reliable predictors of their behaviors and attitudes in adulthood. Through the survey, the AmeriCorps program, which provides service opportunities for

Americans seventeen and older, will gain valuable information on the attitudes of this population toward national and community service. By understanding the unique needs and motivations of the teen population, we can better work to engage them in service both now and in the long term.

Federal, state, and local agencies, nonprofit organizations and associations, schools, volunteer centers, and community and corporate foundations, among others, will use the data from this survey to promote the growth of active teen participation and engagement in the community. Participation patterns and trend information will assist in identifying effective strategies for attracting teens to community service and encouraging them to become actively involved in public and community service.

This survey will collect priority data on educational attainment and school activities, participation in school-based service and volunteer activities, attitudes toward national and community service, and civic attitudes and behaviors. The survey will also collect information on types of organizations with which teens serve, the work teens perform at these organizations, the attitudes and motivations of teens that volunteer, and the reasons why some teens stop volunteering.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13, United States Code, Section 8.

*OMB Desk Officer:* Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: June 16, 2008.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E8–13909 Filed 6–19–08; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### Census Bureau

### Proposed Information Collection; Comment Request; 2010 Decennial Census-American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands

**AGENCY:** U.S. Census Bureau.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** To ensure consideration, written comments must be submitted on or before August 19, 2008.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of questionnaires and instructions should be directed to Frank Vitrano, U.S. Census Bureau, Room 3H174, Washington, DC 20233–9200, 301–763–3961 (or via Internet at: *frank.a.vitrano@census.gov*).

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The Census Bureau will conduct the 2010 Census operations in American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands (collectively referred to as the Island Areas) in partnership with the Government of each Island Area.

The United States Constitution mandates that a census of the Nation's population be taken every ten years. In Title 13, U.S. Code, the Congress gave the Secretary of Commerce (delegated to the Director of the Census Bureau) authority to undertake the decennial census. The geographic scope of the decennial census is specified in Title 13 U.S.C., Section 191 as covering the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, Guam, and any other areas as may be determined by the Department of State. In the 2010 Census, Census also will enumerate the Pacific Island Area of American Samoa.

The Census Bureau's goal in the 2010 Census is to take the most accurate and cost-effective census possible. The goal in selecting the 2010 Census questionnaire content for the Island Areas is to fulfill the many statutory data requirements of Federal agencies, as well as the needs of the Island Areas to administer governmental programs. Census data are the definitive benchmark for virtually all demographic information used by the Island Areas and local governments, policy makers, educators, journalists, and community and nonprofit organizations.

Each Island Area government was asked to form an Interagency Committee, composed of data users from the public, and private sectors, to review the Census 2000 questionnaire and make recommendations for the 2010 Census. Based on the Census Bureau's review of the subject recommendations submitted by the Island Areas Interagency Committees, there will be one questionnaire for the Pacific Island Areas and a separate one for the U.S. Virgin Islands.

The Census Bureau will collect demographic, social, economic, and housing characteristics from the Island Areas population. Many of the questions included on the questionnaires are the same as those on the stateside decennial census short form and the American Community Survey long-form questionnaires. Other questions, as recommended by the Island Areas Interagency Committees, are modifications of stateside questions, or questions that reflect the unique social, economic, and climatic characteristics of these areas. There will be no sampling for content in the Island Areas; all forms distributed will be long-forms.

In the process of developing the data collection forms, the Census Bureau has tried to reduce respondent burden by including only those questions that are required in Federal or local law, or implied in the data requirements for the participation in Federal or local government programs.

#### II. Method of Collection

The Census Bureau will develop and sign a Memorandum of Agreement with the Governor of each of the Island Areas that outlines the mutual roles and responsibilities of each party in the conduct of the 2010 Census for each Island Area.

*A. Delivery Strategy for Questionnaires and Letters*

The Census Bureau will conduct a blanket mailing of unaddressed Advance Census Reports (ACRs) to residential customers in each of the Island Areas. Housing units also will receive an advance letter before questionnaire delivery. Enumerators will visit each housing unit and pick up a completed ACR or conduct an interview with an Enumerator Questionnaire (EQ), if the respondent did not complete the ACR. Enumerators also will develop an address list for the area and map spot the location of each housing unit at the time of enumeration. This operation is called list/enumerate.

*In summary, mailings will include:*

- An advance notice letter that alerts households that the census form will be sent to them soon, and
- An initial mailing package that includes the ACR

If the mailed ACR is not completed upon arrival, the enumerator will conduct an interview using an EQ.

*B. Group Quarters (GQ) Operation*

1. *Group Quarters Advance Visit (GQAV):* The GQAV operation informs the GQ contact person of the upcoming GQ enumeration, addresses privacy and confidentiality concerns relating to personal identifiable information, and identifies any security issues, such as restricted access, required credentials, etc. Crew leaders visit all GQs and conduct an interview with the designated contact person to verify the GQ name, address, contact name, and phone number, and obtain an agreed upon date and time to conduct the enumeration and an expected Census Day population. The information collected during the interview is used to prepare the correct amount of census materials needed to conduct the enumeration at the facility.

2. *Group Quarters Enumeration (GQE):* The GQE operation will be conducted at the Group Quarters on the date agreed upon during the Advance Visit. During the GQE, three different enumeration methods can be used to enumerate the population: (1) Interview residents in group quarters like college dormitories; (2) distribute questionnaire packets for residents in colleges and universities to complete; and (3) use administrative records in places where it is disruptive or unsafe for Census personnel, such as prisons. Enumerators will visit group quarters to develop a control list of all residents and distribute census questionnaires (Individual Census Reports or ICRs) for residents to complete, interview the residents and enter the data on the ICR, or use administrative records to complete the ICR. Enumerators collect and review completed ICRs to ensure that they are complete and legible. They also will complete an ICR for any resident on the control list who did not complete one.

3. *Service-Based Enumeration (SBE):* The SBE is designed to enumerate people experiencing homelessness and who may otherwise be missed during the enumeration of housing units and group quarters. People are enumerated at places where they receive services and at targeted non-sheltered outdoor locations. SBE locations likely will include shelters for people experiencing homelessness (emergency and transitional shelters, and hotels and motels providing shelter for people experiencing homelessness), domestic violence shelters, soup kitchens, regularly scheduled mobile food van stops, and targeted non-sheltered outdoor locations. This operation is conducted to provide an opportunity for people experiencing homelessness to be included in the census.

4. *Military Group Quarters Enumeration:* Military Group Quarters Enumeration is a special component of the GQE designed to enumerate military personnel assigned to barracks, dormitories, military treatment facilities, and disciplinary barracks and jails. Military Census Reports (MCRs) are distributed to the residents of the military facilities. (Military families living in housing units on bases are enumerated using the list/enumerate methodology.) For people living or staying in Military GQs, the Census Bureau provides enumeration procedures, training and questionnaires to military personnel on the base who then conduct the actual enumeration. During the military enumeration, designated base personnel distribute census questionnaires to all military personnel assigned to the GQs, including all people in the disciplinary barracks and jails. Within a few days, base personnel collect the completed questionnaires, obtaining census information for any missing cases. Census staff return to the base to collect the completed questionnaires.

5. *Military/Vessels Enumeration (MVE) in the Pacific Island Areas (PIAs):* The MVE is a special component of Group Quarters Enumeration designed to enumerate people residing on U.S. military ships in operation in the PIAs at the time of the census. This is also sometimes called ''Shipboard Enumeration.'' The MVE uses questionnaires which are distributed to every military vessel home-ported in the PIAs. The Census Bureau provides enumeration procedures, training, and questionnaires to personnel on the vessels who then conduct the actual enumeration. Designated vessel personnel distribute the census questionnaires to those living on the vessels, collect the completed questionnaires, and return them to the Local Census Offices in the PIAs.

*C. Field Follow-Up (FFU) Operations*

The field follow-up operation tries to improve data quality and coverage by correcting Assignment Areas (AAs) with failed edit or missing questionnaires. Additionally, enumerators will also confirm that housing units are correctly classified as vacant units.

1. *Failed-Edit Questionnaires:* During the clerical edit operation, questionnaires are examined by the Local Census Office (LCO) clerks for completeness. Missing person or housing data are identified. Questionnaires which fail the office edit operation are assigned to LCO clerks to attempt a telephone interview with the households for which telephone numbers were provided on the questionnaires. Households that did not provide telephone numbers must be visited by enumerators to obtain the missing data.

2. *Missing Questionnaires:* After the initial field office merge operation is conducted, addresses are identified in the address registers for which there are no questionnaires. Enumerators will visit these addresses and complete questionnaires for each address.

3. *Vacant/Delete Check (VDC) Field Operation:* The VDC Operation is an independent follow-up of selected addresses that are classified as vacant or delete. These addresses are assigned to a different enumerator than the enumerator who made the original classification. Enumerators will verify the Census Day (April 1, 2010) status of the assigned addresses and complete a census questionnaire for all VDC cases. In cases where a housing unit looks visibly demolished, the enumerator must conduct an interview with a proxy respondent (*e.g.*, neighbor or mailman) to confirm that the housing unit was vacant on Census Day. If the housing unit looks occupied, an interview will be conducted with a household member to confirm the status of the unit on Census Day. Although the VDC workload is comprised of only cases identified as vacant, the VDC enumerator may determine that a case is vacant or occupied.

**III. Data**

*OMB Control Number:* None.

*Form Numbers:*
*Letters:*
D–5(L) AS, Advance Letter—AS
D–5(L) CNMI, Advance Letter—CNMI
D–5(L) G, Advance Letter—Guam
D–5(L) VI, Advance Letter—USVI (English, Spanish)
D–13(L) AS, Cover Letter for Advanced Census Report—AS
D–13(L) CNMI, Cover Letter for Advanced Census Report—CNMI
D–13(L) G, Cover Letter for Advanced Census Report—Guam
D–13(L) VI, Cover Letter for Advanced Census Report—USVI (English, Spanish)

*Questionnaires*

D–13 AS, Advanced Census Report—AS
D–13 CNMI, Advanced Census Report—CNMI
D–13 G, Advanced Census Report—Guam
D–13 VI, Advanced Census Report—USVI
D–2(E) AS, Enumerator Questionnaire—AS
D–2(E) CNMI, Enumerator Questionnaire—CNMI
D–2(E) G, Enumerator Questionnaire—Guam
D–2(E) VI, Enumerator Questionnaire—USVI (English)
D–2(E) VI Spanish, Enumerator Questionnaire—USVI (Spanish)
D–2(E) SUPP AS, Enumerator Continuation Questionnaire—AS
D–2(E) SUPP CNMI, Enumerator Continuation Questionnaire—CNMI
D–2(E) SUPP G, Enumerator Continuation Questionnaire—Guam
D–2(E) SUPP VI, Enumerator Continuation Questionnaire—USVI
D–2(E) SUPP VI Spanish, Enumerator Continuation Questionnaire—USVI Spanish
D–20 PI, Individual Census Report—Pacific Islands
D–20 VI, Individual Census Report—USVI
D–21 PI, Military Census Report
D–23 PI, Shipboard Census Report—Pacific Islands
*Job Aids:*
D–1(F) PI, Enumerator Job Aid—Pacific Islands
D–1(F) VI, Enumerator Job Aid—USVI
*Notices:*
D–26 PI, Notice of Visit—Pacific Islands
D–26 VI, Notice of Visit—USVI
D–31 PI, Confidentiality Notice—Pacific Islands
D–31 VI, Confidentiality Notice—USVI.

*Type of Review:* Regular submission.
*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 11,100 households in American Samoa; 19,400 households in the Commonwealth of the Northern Mariana Islands; 52,500 households in Guam; 55,300 households in the U.S. Virgin Islands.

*Estimated Time Per Response:* American Samoa Census Form: 64 minutes; the Commonwealth of the Northern Mariana Islands Census Form: 47 minutes; Guam Census Form: 43 minutes; the U.S. Virgin Islands Census Form: 42 minutes.

*Estimated Total Annual Burden Hours:* American Samoa Census Form: 11,840 hours; the Commonwealth of the Northern Mariana Islands Census Form: 15,197; Guam Census Form: 37,625 hours; the U.S. Virgin Islands Census Form: 38,710 hours.

*Estimated Total Annual Cost:* $0.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 13 U.S.C. Sections 141 and 191.

## IV. Request for Comments

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 16, 2008.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E8–13906 Filed 6–19–08; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[Docket No. 080604733–8735–01]**

**RIN 0648–XI35**

### Endangered and Threatened Species; Sea Turtles

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of request for nominations for the Head of the IAC Secretariat.

**SUMMARY:** The Parties to the InterAmerican Convention for the Protection and Conservation of Sea Turtles (IAC) agreed at the October 2007 Extraordinary Meeting of Parties to a procedure and terms of reference to select the Head of the Secretariat. Therefore, in accordance with that resolution, the United States Government is seeking nominations for the position of the Head of the Secretariat. The United States Government will nominate a candidate to the position. At the November 2008 Conference of Parties, the Parties will choose from all the nominations a Head of the Secretariat.

**DATES:** Nominations must be submitted by 5pm eastern Friday, June 20, 2008, per the instructions below.

**ADDRESSES:** Send comments by any one of the following methods.

(1) Electronic Submissions: Submit all letters of interest via e-mail to: *Alexis.Gutierrez@noaa.gov*. Include in the subject line of the e-mail the following identifier: Letter of Interest for the Head of the IAC Secretariat. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

(2) Fax: 301–713–0376, Attn: U.S. Focal Point for the IAC, Ms. Alexis T. Gutierrez

(3) Mail, Attn: U.S. Focal Point for the IAC, Ms. Alexis T. Gutierrez, Office of Protected Resources, 13th Floor, 1315 East-West Highway, Silver Spring, MD 20910

(4) General Information about the IAC can be found at *www.iacseaturtle.org*.

**FOR FURTHER INFORMATION CONTACT:** Alexis T. Gutierrez (ph. 301–713–2322, fax 301–427–2522).

**SUPPLEMENTARY INFORMATION:**

### Background

In 2001, the InterAmerican Convention for the Protection and

Conservation of Sea Turtles (IAC) came into force. The objective of the Convention is to promote the protection, conservation and recovery of sea turtle populations and of the habitats on which they depend, based on the best available scientific evidence, taking into account the environmental, socioeconomic and cultural characteristics of the Parties. There are currently 13 parties to the Convention. For the last seven years, the IAC has operated through a *Pro Tempore* Secretariat. The term of the current Pro Tempore Secretariat will expire at the end of 2008. The Parties are currently seeking candidates for the position of Head of the Secretariat. Under resolution CIT-COPE1–2007–R1, each Party is responsible for nominating a candidate for consideration as the Head of the Secretariat. The United States government is using this **Federal Register** notice to solicit individuals who wish to be considered for this position. After evaluation of those individuals, the United States Government will submit a nomination to be considered by the Conference of Parties. The applicant will be informed of their selection as the United States nominee prior to the submission. After all the Parties have submitted applicants, the Parties will select the top four candidates to be interviewed at the November 2008 Conference of Parties meeting in Honduras. At that same meeting, the Parties will choose a Head of the Secretariat. The candidate selected to be the Head of the Secretariat, will be expected to begin in January of 2009.

All nominations for the position must meet the requirements outlined in IAC Resolution (CIT-COPE1–2007–R1). This resolution can be found at *http://www.iacseaturtle.org/iacseaturtle/English/download/CIT-COPE1–2007–R1%20Eng.pdf* . Information regarding the IAC, such as the text of the Convention, approved resolutions, Parties and more can be found at www.iacseaturtle.org.

All letters of interest should contain the following information, and be submitted to the individual listed in **ADDRESSES** by 5pm eastern, Friday, June 27, 2008:

1. A cover letter to Ms. Alexis T. Gutierrez, United States Government focal point, containing a statement of purpose of the application and succinct descriptions of the applicant experiences and abilities.

2. Curriculum Vitae

3. List of publications, if available.

4. Three letters of reference from persons with a recent knowledge of the applicant's character, qualifications and experience.

**Authority:** Endangered Species Act, Title 16, United States Code, Section 1536 *et seq.*

Dated: June 16, 2008.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

[FR Doc. E8–13986 Filed 6–19–08; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### U.S. Nuclear Command and Control System Comprehensive Review Advisory Committee Closed Meetings

**AGENCY:** Department of Defense.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. paragraph 552b, as amended), and 41 CFR paragraph 102–3.150, the Department of Defense announces the following meetings of the U.S. Nuclear Command and Control System Comprehensive Review Advisory Committee.

**DATES:** July 8, 2008 (8:30 a.m. to 4:30 p.m.) and July 9, 2008 (8:30 a.m. to 5 p.m.)

**ADDRESSES:** Pentagon Conference Center M4 and B6 respectively.

**FOR FURTHER INFORMATION CONTACT:** Mr. William L. Jones, (703) 681–8681, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline 3, 5201 Leesburg Pike, Suite 500, Falls Church, Virginia 22041.

**SUPPLEMENTARY INFORMATION:** *Purposes of the Meetings:* To provide an overview of Nuclear Command and Control System assessments and to present Research Group Plans of Action and Milestones in support of the Review's objectives.

AGENDA, JULY 8, 2008

| Time | Topic | Presenter |
|---|---|---|
| 8:30 am | Administrative Remarks | CAPT Budney, USN (NSS) |
| 8:50 am | NCCS Annual Report | Mr. Rogers (NSS) |
| 9:10 am | Joint Surety Report | ATSD(NCB)/NM |
| 9:30 am | Weapons Oversight (NWC's role) | ATSD(NCB)/NM |
| 9:50 am | Break. | |
| 10:10 am | DoD National Leadership Command Capabilities Oversight | OASD(NII) |
| 10:30 am | DoD IG Nuclear Weapons-related audits | DoD IG |
| 10:50 am | Relevant GAO Reports | TBD |
| 11:15 am | Lunch. | |
| 12:30 pm | DSB Task Force on Nuclear Weapons Surety Unauthorized Movement of Nuclear Weapons. | Gen (Ret) Larry Welch |
| 1:00 pm | Air Force Command-Directed Investigation | Air Staff |
| 1:30 pm | Air Force Blue Ribbon Review | Air Staff |
| 2:00 pm | Break. | |
| 2:15 pm | DSB Task Force on Nuclear Weapons Surety Report on the Navy Nuclear Enterprise. | Gen (Ret) Larry Welch |
| 2:45 pm | Readiness and Reliability Fleet Review | ComSubFor for Navy Staff |
| 3:15 pm | Nuclear Survivability and Assessment | Mr. Andy Metzger (STRATCOM) |
| 4:00 pm | Executive Session. | |
| 4:30 pm | Adjourn. | |

AGENDA, JULY 9, 2008

| Time | Topic | Presenter |
|---|---|---|
| 8:30 am | Administrative Remarks | CAPT Budney, USN (NSS) |
| 8:45 am | Physical and Personnel Security | Mr. Devin Biniaz (OSD)<br>Mr. Jeff Everett (SNL) |
| 9:15 am | Recapture/Recovery | Mr. Steve Wanzer (NNSA)<br>Ms. Pam Piersanti (FBI) |
| 9:45 am | Accident/Incident | Ms. Alane Andreozzi (DTRA)<br>Ms. Patricia Garcia (NNSA) |
| 10:15 am | Break. | |
| 10:30 am | Warhead and Stockpile Management | Mr. Tim Driscoll<br>Mr. Sean McDonald (OSD) |
| 11:00 am | Weapons Delivery Systems | CAPT Bob Vince, USN (SSP)<br>Col Rob Hyde, USAF (AFIA) |
| 11:30 am | Nuclear Command and Control | Mr. Bob Servant (STRATCOM) |
| 12:00 pm | Lunch. | |
| 1:00 pm | Force Planning | Mr. Jim Colasacco (STRATCOM) |
| 1:30 pm | Information Assurance | Mr. Chuck Nicholson (STRATCOM)<br>Ms. Gloria Serrao (NSA) |
| 2:00 pm | Break. | |
| 2:15 pm | Situational Awareness & ITW/AA | Col Steve Winters, USAF (AFSPC)<br>Col Albert Zelenak, USAF (STRAT) |
| 2:45pm | Communications | Mr. John Goodman (DISA)<br>Mr. Tom McNamara (JHU)<br>Mr. Bill Thoms (DISA) |
| 3:15 pm | Threat/Intelligence | Mr. Kurzenhauser (ODNI)<br>Mr. Mike Holtz (DOE) |
| 3:45 pm | Crisis Support | Mr. Bill Lublin (JS) |
| 4:15 pm | Executive Session. | |
| 5:00 pm | Adjourn. | |

Pursuant to 5 U.S.C. paragraph. 552b, as amended, and 41 CFR paragraph. 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. The Director, U.S. Nuclear Command and Control System Support Staff, in consultation with his General Counsel, has determined in writing that the public interest requires that all sessions of the committee's meeting will be closed to the public because they will be concerned with classified information and matters covered by section 5 U.S.C. paragraph 552b(c)(1). *Committee's Designated Federal Officer:* Mr. William L. Jones, (703) 681–8681, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline 3, 5201 Leesburg Pike, Suite 500, Falls Church, Virginia 22041. *William.jones@nss.pentagon.mil*

Pursuant to 41 CFR paragraphs 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements at any time to the Nuclear Command and Control System Federal Advisory Committee about its mission and functions. All written statements shall be submitted to the Designated Federal Officer for the Nuclear Command and Control System Federal Advisory Committee. He will ensure that written statements are provided to the membership for their consideration. Written statements may also be submitted in response to the stated agenda of planned committee meetings. Statements submitted in response to this notice must be received by the Designated Federal Official at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after that date may not be provided to or considered by the Committee until its next meeting. All submissions provided before that date will be presented to the committee members before the meeting that is subject of this notice. Contact information for the Designated Federal Officer is listed above.

Dated: June 16, 2008.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E8–13987 Filed 6–19–08; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2008–OS–0071]**

### Privacy Act of 1974; System of Records

**AGENCY:** National Security Agency/ Central Security Service, DoD

**ACTION:** Notice to Delete a System of Records.

**SUMMARY:** The National Security Agency/Central Security Service is deleting a system of records notice from its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on July 21, 2008 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the National Security Agency/ Central Security Service, Office of Policy, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anne Hill at (301) 688–6527.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

Dated: June 16, 2008.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

**Deletion**
**GNSA 13**

**SYSTEM NAME:**

NSA/CSS Archival Records (February 22, 1993, 58 FR 10531).

**REASON:**

The NSA Archives were set up to maintain historical information on NSA/CSS activities and does not maintain personal information about individuals. The information stored in the NSA Archives is indexed and routinely retrieved by subject matter. While the databases that contain the Archived information have the capability to do a keyword search on names, this type of search is rarely done.

[FR Doc. E8–13995 Filed 6–19–08; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary of Defense

### Renewal of Department of Defense Federal Advisory Committees

**AGENCY:** Department of Defense.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.65, the Department of Defense gives notice that it is renewing the charter for the Uniform Formulary Beneficiary Advisory Panel (hereafter referred to as the Panel).

The Panel is a non-discretionary federal advisory committee established by the Secretary of Defense to provide the Department of Defense, the Assistant Secretary of Defense (Health Affairs) and the Director, TRICARE Management Activity independent advice and recommendations on the development of the uniform formulary. The Panel, in accomplishing its mission: (a) Creates transparency in the policy decisions regarding the DoD Uniform Formulary; (b) provides public forum where beneficiaries may voice their opinions regarding formulary changes allowing panel members, who represent their interests, to advocate for change within their member organizations and beyond.

The Panel shall be composed of not more than 15 members, who shall include members that represent (a) Non-Government organizations and associations that represent the views and interests of a large number of eligible covered beneficiaries; (b) contractors responsible for the TRICARE retail pharmacy program; (c) contractors responsible for the national mail-order pharmacy program; and (d) TRICARE network providers. Panel members appointed by the Secretary of Defense, who are not federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109 and with the exception of travel and per diem for official travel, shall serve without compensation, unless otherwise authorized by the Secretary of Defense. The Secretary of Defense shall renew the appointments of these Special Government Employees on an annual basis. The Under Secretary of Defense (Personnel and Readiness) or designed representative shall select the Panel's Chairperson from the total Panel membership.

The Panel shall be authorized to establish subcommittees, as necessary and consistent with its mission, and these subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976, and other appropriate federal regulations.

Such subcommittees or workgroups shall not work independently of the chartered Panel, and shall report all their recommendations and advice to the Panel for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Panel nor can they report directly to the Department of Defense or any federal officers or employees who are not Panel members.

**FOR FURTHER INFORMATION CONTACT:** Contact Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703–601–6128.

**SUPPLEMENTARY INFORMATION:** The Panel shall meet at the call of the Panel's Designated Federal Officer, in consultation with the Panel's chairperson. The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. The Designated Federal Officer or duly appointed Alternate Designated Federal Officer shall attend all Panel meetings and subcommittee meetings.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Uniform Formulary Beneficiary Advisory Panel membership about the Panel's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Uniform Formulary Beneficiary Advisory Panel.

All written statements shall be submitted to the Designated Federal Officer for the Uniform Formulary Beneficiary Advisory Panel, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Uniform Formulary Beneficiary Advisory Panel's Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Uniform Formulary Beneficiary Advisory Panel. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: June 16, 2008.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E8–13992 Filed 6–19–08; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2008–OS–0072]**

### U.S. Court of Appeals for the Armed Forces Proposed Rules Change

**ACTION:** Notice of Proposed Change to the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces.

**SUMMARY:** This notice announces the following proposed change to Rule 21(f) of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces for public notice and comment. New language is in bold print. Language to be removed is within brackets.

**DATES:** Comments on the proposed change must be received within 30 days of the date of this notice.

**ADDRESSES:** You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

*Instructions:* All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions

from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** William A. DeCicco, Clerk of the Court, telephone (202) 761–1448.

Dated: June 16, 2008.

**Patricia L. Toppings,**

*OSD Federal Liaison Officer, DoD.*

Rule 21 (a)–(e) unchanged.

(f) [An appellant or counsel for an appellant may move to withdraw his petition at any time. See Rule 30.]

(f) An appellant or counsel for an appellant may move to withdraw his petition at any time by filing a motion pursuant to Rule 30. Such a motion shall substantially comply with the requirements of Rule for Courts-Martial 1110, and be accompanied by a written request for withdrawal that includes the following:

**(1) A statement that the appellant and counsel for the appellant have discussed the appellant's right to appellate review, the effect of withdrawal, and that the appellant understands these matters;**

(2) A statement that the motion to withdraw the petition is submitted voluntarily and cannot be revoked; and

(3) The signatures of the appellant and counsel for the appellant.

*Comment:* The requirements for submitting a motion to withdraw a petition for grant of review should be changed to ensure that the appellant is personally aware of the motion and that it is submitted voluntarily with full knowledge of its meaning and effect.

[FR Doc. E8–13997 Filed 6–19–08; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

**AGENCY:** Department of Energy.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, July 9, 2008, 6 p.m.

**ADDRESSES:** DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

**FOR FURTHER INFORMATION CONTACT:** Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–2347 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *www.oakridge.doe.gov/em/ssab.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

*Tentative Topic:* The main meeting topic will be the Environmental Management Cleanup History and Progress and how the Oak Ridge SSAB has influenced the program.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Pat Halsey at the address and phone number listed above. Minutes will also be available at the following website: *http://www.oakridge.doe.gov/em/ssab/minutes.htm.*

Issued at Washington, DC on June 16, 2008.

**Rachel Samuel,**

*Deputy Committee Management Officer.*

[FR Doc. E8–14030 Filed 6–19–08; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 6951–014]**

### Fall Line Hydro Company, Inc.; Tallassee Shoals, LLC; Notice of Application for Transfer of License, and Soliciting Comments, Motions To Intervene, and Protests

June 13, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 6951–014.

c. *Date Filed:* May 30, 2008.

d. *Applicants:* Fall Line Hydro Company, Inc. (transferor) and Turnbull Hydro, LLC (Transferee).

e. *Name and Location of Project:* Tallassee Shoals Project is located on the Middle Oconee River in Clarke and Jackson Counties, Georgia.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Applicant Contacts:* For the transferor: Robert A. Davis, Fall Line Hydro Company, Inc., 390 Timber Laurel Lane, Lawrenceville, GA 30043.

For the transferee: Walter A. Puryear, Tallassee Shoals, LLC, 2399 Tallassee Road, Athens, GA 30607.

h. *FERC Contact:* Robert Bell at (202) 502–6062.

i. *Deadline for filing comments, protests, and motions to intervene:* July 14, 2008.

All documents (original and eight copies) should be filed with: Kimberly Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the Project Number on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* Applicants seek Commission approval

to transfer the license for the Tallassee Shoals Project from Fall Line Hydro Company, Inc., to Tallassee Shoals, LLC.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number (P–3255) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicants specified in the particular application.

o. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicants. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants' representatives.

**Kimberly Bose,**

*Secretary. Project No. 6951–014 3*

[FR Doc. E8–13946 Filed 6–19–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2987–006]**

### Howard and Verna Cornwell; Joe Vavuris and Ryan Wiegel; Notice of Application for Transfer of License, and Soliciting Comments, Motions To Intervene, and Protests

June 13, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 2987–006.

c. *Date Filed:* May 22, 2008.

d. *Applicants:* Howard and Verna Cornwell (transferor) and Joe Vavuris and Ryan Wiegel (Transferee).

e. *Name and Location of Project:* Cornwell Project is located on the Merrill Creek in Siskiyou County, California.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r.

g. *Applicant Contacts:* For the transferor: Joe Vavuris and Ryan Wiegel, 570 Matadero Avenue, Palo Alto, CA 94306.

For the transferee: Joe Vavuris and Ryan Wiegel, 570 Matadero Avenue, Palo Alto, CA 94306.

h. *FERC Contact:* Robert Bell at (202) 502–6062.

i. *Deadline for filing comments, protests, and motions to intervene:* July 14, 2008.

All documents (original and eight copies) should be filed with: Kimberly Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the Project Number on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* Applicants seek Commission approval to transfer the license for the Cornwell Project from Howard and Verna Cornwell, to Joe Vavuris and Ryan Wiegel, in light of an April 7, 2006 conveyance of project property.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number (P–3255) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicants specified in the particular application.

o. *Agency Comments*—Federal, state, and local agencies are invited to file

comments on the described application. A copy of the application may be obtained by agencies directly from the Applicants. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants' representatives.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–13950 Filed 6–19–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 11068–011]**

### Orange Cove Irrigation District; Friant Power Authority; Notice of Application for Transfer of License, and Soliciting Comments, Motions To Intervene, and Protests

June 13, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 11068–011.

c. *Date Filed:* April 2, 2008.

d. *Applicants:* Orange Cove Irrigation District (transferor) and Friant Power Authority (Transferee).

e. *Name and Location of Project:* Fishwater Release Project is located on the San Joaquin River in Fresno and Madera Counties, California.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Applicant Contacts:* For the transferor: Harvey Bailey, Orange Cove Irrigation District, P.O. Box 308, Orange Cove, CA 93646–0308.

For the transferee: Harvey Bailey, Orange Cove Irrigation District, P.O. Box 308, Orange Cove, CA 93646–0308 and William R. Carlisle, Friant Power Authority, P.O. Box 279, Delano, CA 93216.

h. *FERC Contact:* Robert Bell at (202) 502–6062.

i. *Deadline for filing comments, protests, and motions to intervene:* July 14, 2008.

All documents (original and eight copies) should be filed with: Kimberly Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the Project Number on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* Applicants seek Commission approval to transfer the license for the Fishwater Release Project from Orange Cove Irrigation District, to Orange Cove Irrigation District and Friant Power Authority, in light of an April 7, 2006 conveyance of project property.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number (P–11068) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicants specified in the particular application.

o. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicants. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants' representatives.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–13948 Filed 6–19–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12599–011]**

### Wade Jacobsen; Turnbull Hydro, LLC; Notice of Application for Transfer of License, and Soliciting Comments, Motions To Intervene, and Protests

June 13, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 12599–011.

c. *Date Filed:* May 22, 2008.

d. *Applicants:* Wade Jacobsen (transferor) and Turnbull Hydro, LLC (Transferee).

e. *Name and Location of Project:* Mill Coulee drops Project is located on the Mill Coulee Canal in Cascade County, Montana.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Applicant Contacts:* For the transferor: Ted S. Sorensen, 5203 South 11th Street, Idaho Falls, ID 83404.

For the transferee: Ted S. Sorensen, 5203 South 11th Street, Idaho Falls, ID 83404.

h. *FERC Contact:* Robert Bell at (202) 502–6062.

i. *Deadline for filing comments, protests, and motions to intervene:* July 14, 2008.

All documents (original and eight copies) should be filed with: Kimberly

Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the Project Number on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* Applicants seek Commission approval to transfer the license for the Mill Coulee Drops Project from Wade Jacobsen, to Turnbull Hydro, LLC.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number (P–3255) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicants specified in the particular application.

o. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicants. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants' representatives.

**Kimberly Bose,**

*Secretary.*

[FR Doc. E8–13949 Filed 6–19–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Combined Notice of Filings #1

June 16, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP96–200–192.

*Applicants:* CenterPoint Energy Gas Transmission Co.

*Description:* CenterPoint Energy Gas Transmission Co. submits two negotiated rate agreements with Connect Energy Services, LLC.

*Filed Date:* 06/13/2008.

*Accession Number:* 20080613–0074.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 25, 2008.

*Docket Numbers:* RP08–358–001.

*Applicants:* CenterPoint Energy Gas Transmission Co.

*Description:* CenterPoint Energy Gas Transmission Co. submits Substitute Thirteenth Revised Sheet 32 *et al.* to FERC Gas Tariff, Sixth Revised Volume 1 to comply with the Commission's Letter Order issued on 5/29/08, effective 6/1/08.

*Filed Date:* 06/13/2008.

*Accession Number:* 20080616–0001.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 25, 2008.

*Docket Numbers:* RP08–360–001.

*Applicants:* Northern Natural Gas Company.

*Description:* Northern Natural Gas Co. submits supportive information in compliance with FERC's 5/29/08 Order.

*Filed Date:* 06/11/2008.

*Accession Number:* 20080612–0201.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 23, 2008.

*Docket Numbers:* RP08–340–001.

*Applicants:* Cheyenne Plains Gas Pipeline Company LLC.

*Description:* Cheyenne Plains Gas Pipeline Company, LLC's compliance filing of workpapers in support of the fuel gas and lost and unaccounted for gas reimbursement percentages.

*Filed Date:* 06/12/2008.

*Accession Number:* 20080613–0075.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, June 24, 2008.

*Docket Numbers:* RP08–404–000.

*Applicants:* Williston Basin Interstate Pipeline Co.

*Description:* Williston Basin Interstate Pipeline Co. submits Fourteenth Revised Sheet 376 and 376A to FERC Gas Tariff, Second Revised Volume 1, to become effective 6/10/08.

*Filed Date:* 06/10/2008.

*Accession Number:* 20080611–0128.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 23, 2008.

*Docket Numbers:* RP08–405–000.

*Applicants:* National Fuel Gas Supply Corporation.

*Description:* Petition of National Fuel Gas Supply Corp. for Waiver of Tariff Provisions.

*Filed Date:* 06/10/2008.

*Accession Number:* 20080611–0129.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 23, 2008.

*Docket Numbers:* RP08–406–000.

*Applicants:* El Paso Natural Gas Company.

*Description:* El Paso Natural Gas Co submits a request for waiver of Section 5.1(a) of the General Terms and Conditions re FERC Gas Tariff, Second Revised Volume 1A.

*Filed Date:* 06/11/2008.

*Accession Number:* 20080612–0202.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 23, 2008.

*Docket Numbers:* RP08–407–000.

*Applicants:* El Paso Natural Gas Company.

*Description:* El Paso Natural Gas Co submits Fifth Revised Sheet 226 to FERC Gas Tariff, Second Revised Volume 1A, to become effective on 7/14/08.

*Filed Date:* 06/11/2008.

*Accession Number:* 20080612–0203.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 23, 2008.

*Docket Numbers:* RP08–408–000.

*Applicants:* Saltville Gas Storage Company L.L.C.

*Description:* Saltville Gas Storage Company, LLC submits First Revised Sheet 3 to FERC Gas Tariff, Original Volume 1, to become effective 7/12/08.

*Filed Date:* 06/12/2008.

*Accession Number:* 20080613–0007.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, June 24, 2008.

*Docket Numbers:* RP08–358–001.

*Applicants:* CenterPoint Energy Gas Transmission Co.

*Description:* CenterPoint Energy Gas Transmission Co submits Substitute Thirteenth Revised Sheet 32 *et al* to FERC Gas Tariff, Sixth Revised Volume 1 to comply with the Commission's Letter Order issued on 5/29/08, effective 6/1/08.

*Filed Date:* 06/13/2008.

*Accession Number:* 20080616–0001.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 25, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E8–13904 Filed 6–19–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. OA07–38–001]**

### Southern Company Services, Inc.; Notice of Filing

June 13, 2008.

Take notice that on May 14, 2008, Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company, tendered for filing revised tariff sheet in compliance with Commission's April 14 Order.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on June 23, 2008.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–13947 Filed 6–19–08; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER08–765–000; ER08–765–001]**

### KD Power Marketing Services, LLC; Notice of Issuance of Order

June 13, 2008.

KD Power Marketing Services, LLC (KD Power) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. KD Power also requested waivers of various Commission regulations. In particular, KD Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by KD Power.

On June 11, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by KD Power, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004). The Commission encourages the electronic submission of protests using the FERC Online link at *http://www.ferc.gov.*

Notice is hereby given that the deadline for filing protests is July 11, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, KD Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of KD Power, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of KD Power's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–13951 Filed 6–19–08; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–8582–9]**

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 2008 (73 FR 19833).

**Draft EISs**

EIS No. 20070299, ERP No. D–AFS–J65488–WY, Battle Park Cattle and Horse (C&H) and Mistymoon Sheep and Goat (S&G) Allotment Project, Proposes to Continue Livestock Grazing on both Allotments, Powder River District Ranger, Bighorn National Forest, Bighorn County, WY.

*Summary:* EPA expressed environmental concerns about impacts to soil and water resources, and recommended including more information on water quality, current extent of invasive species, and drought mitigation planning. Rating EC2.

EIS No. 20080015, ERP No. D–BLM–J65505–WY, Westside Land Conveyance Project, Congressionally-Mandated Transfer of 16,500 Acres of Public Land to the Westside Irrigation District, Big Horn and Washakie Counties, WY.

*Summary:* EPA expressed environmental concerns about water quality impacts from crop production on newly irrigated lands. The final EIS should include measures to avoid or mitigate impacts to the Big Horn River. Rating EC2.

EIS No. 20080092, ERP No. D–BIA–J01082–MT, Absaloka Mine Crow Reservation South Extension Coal Lease Approval, Proposed Mine Development Plan, and Related Federal and State Permitting Actions, Crow Indian Reservation, Crow Tribe, Bighorn County, MT.

*Summary:* EPA expressed environmental concerns about impacts to ground and surface water and cumulative air impacts. Rating EC2.

EIS No. 20080119, ERP No. D–USN–K10011–CA, Southern California Range Complex, To Organize, Train, Equip, and Maintain Combat-Ready Naval Forces, San Diego, Orange and Los Angeles Counties, CA.

*Summary:* EPA expressed environmental concerns about impacts to marine resources. Rating EC2.

EIS No. 20080133, ERP No. D–NPS–G65108–TX, Guadalupe Mountains National Park, General Management Plan, Implementation, Culberson and Hudspeth Counties, TX.

*Summary:* EPA does not object to the preferred alternative. Rating LO.

**Final EISs**

EIS No. 20080140, ERP No. F–DOI–J39030–UT, Lower Duchesne River Wetlands Mitigation Project (LDWP), Restoration Measures in the Lower Duchesne River Area, Strawberry Aqueduct and Collection System (SACS) on portion of the Strawberry Reservoir, Implementation, Ute Indian Tribe, NPDES and U.S. Army COE section 404 Permits, Duchesne, Utah, Uintah Counties, UT.

*Summary:* No formal comment letter was sent to the preparing agency.

EIS No. 20080145, ERP No. F–FRC–F03011–00, Rockies Express Pipeline Project, (REX–East), Construction and Operation of Natural Gas Pipeline Facilities, WY, NE, MO, IL, IN and OH.

*Summary:* EPA continues to have environmental concerns about impacts to surface/ground water, wetlands, air quality, and upland forest habitat, and recommends additional mitigation plans/measures be included in the ROD or equivalent FERC order.

EIS No. 20080152, ERP No. F–FRC–E05103–NC, Yadkin—Yadkin-Pee Dee Hydro Electric Project (Docket Nos. P–2197–073 & P–2206–030), Issuance of New Licenses for the Existing and Proposed Hydropower Projects, Yadkin—Yadkin-Pee Dee Rivers, Davidson, Davie, Montgomery, Rowan, Stanly, Anson and Richmond Counties, NC.

*Summary:* EPA's previous concerns have been resolved; therefore, EPA does not object to the proposed action.

EIS No. 20080178, ERP No. F–AFS–J65486–UT, Big Creek Vegetation Treatment Project, Preferred Alternative is 1, To Treat 4,800 Acres of Aspen Conifer and Sagebrush Communities, Ogden Ranger District, Wasatch-Cache National Forest, Rich County, UT.

*Summary:* No formal comment letter was sent to the preparing agency.

EIS No. 20080151, ERP No. FA–AFS–K65286–CA, Watdog Project, Additional Clarification of Changes Between the Final EIS (2005) and Final Supplement EIS (2007), Feather River Ranger District, Plumas National Forest, Butte and Plumas Counties, CA.

*Summary:* EPA continues to have environmental concerns about cumulative impacts to watersheds and short-term impacts to old-forest species, and recommends a less-intensive harvest alternative.

EIS No. 20080173, ERP No. FS–FTA–G40190–TX, North Corridor Fixed Guideway Project, Updated/Additional Information on the Locally Preferred Alternative, Propose Transit Improvements from University of Houston (UH)–Downtown Station to Northline Mall, Harris County, TX.

*Summary:* No formal comment letter was sent to the preparing agency.

EIS No. 20080179, ERP No. FS–FTA–G40191–TX, Southeast Corridor Project, Preferred Alternative is the Light Rail Alternative, Proposed Fixed-Guideway Transit System, Funding, Metropolitan Transit Authority (METRO) of Harris County, Houston, Harris County, TX.

*Summary:* No formal comment letter was sent to the preparing agency.

Dated: June 17, 2008.

**Robert W. Hargrove,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. E8–14004 Filed 6–19–08; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–8582–8]**

### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed 06/09/2008 through 06/13/2008 Pursuant to 40 CFR 1506.9.

*EIS No. 20080234, Draft EIS, AFS, WA,* Dosewallips Road Washout Project, to Reestablish Road Access to both Forest Service Road (FSR) 2610 and Dosewallips Road, Hood Canal Ranger District Olympic National Forest, Olympic National Park, Jefferson County, WA, *Comment Period Ends:* 08/19/2008, *Contact:* Tim Davis 360–956–2375.

*EIS No. 20080235, Final Supplement, NOA, AK,* Cook Inlet Beluga Whale Subsistence Harvest Project, Proposes to Implement a Long-Term Harvest Plan and Fulfill the Federal Government's Trust Responsibility, Cook Inlet, AK, *Wait Period Ends:* 07/21/2008, *Contact:* Robert D Mecum 907–586–7235.

*EIS No. 20080236, Final EIS, BIA, WA,* Spokane Tribes Integrated Resource Management Plan (IRMP) for the Spokane Indian Reservation, Implementation, Stevens County, WA, *Wait Period Ends:* 07/21/2008, *Contact:* Donna Smith 509–258–4561.

*EIS No. 20080237, Draft EIS, NPS, SD*, Wind Cave National Park Project, Elk General Management Plan, Implementation, Custer County, SD, *Comment Period Ends:* 08/18/2008, *Contact:* Nick Chevance 402–661–1844.

*EIS No. 20080238, Draft EIS, AFS, WY,* Off-Highway Vehicle (OHV) Route Designation Project, Proposing to Improve Management of Public Summer Motorized Use (May 1–November 30) by Designating Roads and Motorized Trails, Bridger-Teton National Forest, Buffalo, Jackson and Big Piney Ranger Districts, Teton, Lincoln and Sublette Counties, WY, *Comment Period Ends:* 08/04/2008, *Contact:* Linda Merigliano 307–739–5428.

*EIS No. 20080239, Draft Supplement, UAF, MA,* Pave Paws Early Warning Radar Operation Project, Continued Operation of the Solid-State Phased-Array Radar System (SSPARS), also known as Pave, Phased Array Warning Systems (PAWS), Cape Cod Air Force Station, MA, *Comment Period Ends:* 08/04/2008, *Contact:* Lynne Neuman 719–554–6406.

*EIS No. 20080240, Draft EIS, DOA, 00,* PROGRAMMATIC—Geothermal Leasing in the Western United States, *Comment Period Ends:* 09/17/2008, *Contact:* Jack G. Peterson 208–373–4048.

Department of the Interior/Bureau of Land Management and Department of Agriculture/Forest Service's are Joint Lead Agencies for the above project. The contact person for (BLM) is Jack G. Peterson at 208–373–4048 and the contact person for (AFS) is Tracy Parker at 703–605–4796.

**Amended Notices**

*EIS No. 20080125, Draft EIS, FHW, NC,* I–26 Connector Project, Proposed Multi-Land Freeway from I–40 to US19–23–70 North of Asheville, Funding, U.S. Coast Guard Permit, U.S. Army COE section 10 and 404 Permit, Buncombe County, Asheville, NC, *Comment Period Ends:* 06/23/2008, *Contact:* John F. Sullivan III, P.E. 919–856–4346 Ext. 122.

Revision of FR Notice Published 04/11/2008: Extending Comment from 05/19/2008 to 06/23/2008.

*EIS No. 20080186, Draft EIS, FAA, NV,* City of Mesquite, Proposed Replacement General Aviation Airport, Implementation, Clark County, NV, *Comment Period Ends:* 07/18/2008, *Contact:* Barry Franklin 650–876–2778.

Revision to FR Notice Publish 05/16/2008: Extending Comment from 07/03/2008 to 07/18/2008.

Dated: June 17, 2008.

**Robert W. Hargrove,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. E8–14005 Filed 6–19–08; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2008–0449; FRL–8683–4]**

### Proposed Approval of the Central Characterization Project's Transuranic Waste Characterization Program at Oak Ridge National Laboratory

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability; opening of public comment period.

**SUMMARY:** The Environmental Protection Agency (EPA or we) is announcing the availability of, and soliciting public comments for 45 days on, the proposed approval of the radioactive, contact-handled (CH), transuranic (TRU) waste characterization program implemented by the Central Characterization Project (CCP) at Oak Ridge National Laboratory (ORNL) in Oak Ridge, Tennessee. This waste is intended for disposal at the Waste Isolation Pilot Plant (WIPP) in New Mexico.

In accordance with the WIPP Compliance Criteria, EPA evaluated the characterization of CH TRU debris waste from ORNL–CCP during an inspection conducted the week of November 13, 2007. Using the systems and processes developed as part of the U.S. Department of Energy's (DOE's) Carlsbad Field Office (CBFO) program, EPA verified whether DOE could adequately characterize CH TRU waste consistent with the Compliance Criteria. The results of EPA's evaluation of ORNL–CCP's program and its proposed approval are described in the Agency's inspection report, which is available for review in the public dockets listed in **ADDRESSES**. We will consider public comments received on or before the due date mentioned in **DATES**.

This notice summarizes the waste characterization processes evaluated by EPA and EPA's proposed approval. As required by the 40 CFR 194.8, at the end of a 45-day comment period EPA will evaluate public comments received, and if appropriate, finalize the reports responding to the relevant public comments, and issue a final report and approval letter to DOE.

**DATES:** Comments must be received on or before August 4, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0449, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov.*
- Fax: 202–566–1741.

• Mail: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

*Instructions:* Direct your comments to Attn: Docket ID No. EPA–HQ–OAR–2008–0449. The Agency's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov.* As provided in EPA's regulations at 40 CFR Part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

**FOR FURTHER INFORMATION CONTACT:** Rajani Joglekar or Ed Feltcorn, Radiation Protection Division, Center for Federal Regulations, Mail Code 6608J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC, 20460; telephone number: 202–343–9601; fax number: 202–343–2305; e-mail address: *joglekar.rajani@epa.gov* or *feltcorn.ed@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

• Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

• Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

• Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

• Describe any assumptions and provide any technical information and/or data that you used.

• If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

• Provide specific examples to illustrate your concerns, and suggest alternatives.

• Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

• Make sure to submit your comments by the comment period deadline identified.

## II. Background

DOE is developing the WIPP, near Carlsbad in southeastern New Mexico, as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. No. 102–579), as amended (Pub. L. No. 104–201), TRU waste consists of materials that have atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

TRU waste is itself divided into two categories, based on its level of radioactivity. Contact-handled (CH) TRU waste accounts for about 97 percent of the volume of TRU waste currently destined for the WIPP. It is packaged in 55-gallon metal drums or in metal boxes and can be handled under controlled conditions without any shielding beyond the container itself. The maximum radiation dose at the surface of a CH TRU waste container is 200 millirems per hour. CH waste primarily emits alpha particles that are easily shielded by a sheet of paper or the outer layer of a person's skin.

Remote-handled (RH) TRU waste emits more radiation than CH TRU waste and must therefore be both handled and transported in shielded casks. Surface radiation levels of unshielded containers of remote-handled transuranic waste exceed 200 millirems per hour. RH waste primarily emits gamma radiation, which is very penetrating and requires concrete, lead, or steel to block it.

On May 13, 1998, EPA issued a final certification of compliance for the WIPP facility. The final rule was published in the **Federal Register** on May 18, 1998 (63 FR 27354). EPA officially recertified WIPP on March 29, 2006 (71 FR 18015). Both the certification and recertification determined that WIPP complies with the Agency's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C, and is therefore safe to contain TRU waste.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratories (LANL) until the EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2

of Appendix A to 40 CFR Part 194); and (2) (with the exception of specific, limited waste streams and equipment at LANL) prohibit shipment of TRU waste for disposal at WIPP (from LANL or any other site) until EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of Appendix A to 40 CFR Part 194). The EPA's approval process for waste generator sites is described in § 194.8 (revised July 2004).

Condition 3 of the WIPP Certification Decision requires EPA to conduct independent inspections at DOE's waste generator/storage sites of their TRU waste characterization capabilities before approving their program and the waste for disposal at the WIPP. EPA's inspection and approval process gives EPA (a) Discretion in establishing technical priorities, (b) the ability to accommodate variation in the site's waste characterization capabilities, and (c) flexibility in scheduling site WC inspections.

As described in § 194.8(b), EPA's baseline inspections evaluate each WC process component (equipment, procedures, and personnel training/experience) for its adequacy and appropriateness in characterizing TRU waste destined for disposal at WIPP. During an inspection, the site demonstrates its capabilities to characterize TRU waste(s) and its ability to comply with the regulatory limits and tracking requirements under § 194.24. A baseline inspection may describe any limitations on approved waste streams or waste characterization processes [§ 194.8(b)(2)(iii)]. In addition, a baseline inspection approval must specify what subsequent WC program changes or expansion should be reported to EPA [§ 194.8(b)(4)]. The Agency is required to assign Tier 1 (T1) and Tier 2 (T2) to the reportable changes depending on their potential impact on data quality. A T1 designation requires that the site must notify EPA of proposed changes to the approved components of an individual WC process (such as radioassay equipment or personnel), and EPA must also approve the change before it can be implemented. A WC element with a T2 designation allows the site to implement changes to the approved components of individual WC processes (such as visual examination procedures) but requires EPA notification. The Agency may choose to inspect the site to evaluate technical adequacy before approval. EPA inspections conducted to evaluate T1 or T2 changes are follow-up inspections under the authority of § 194.24(h). In addition to the follow-up inspections, if warranted, EPA may opt to conduct continued compliance inspections at TRU waste sites with a baseline approval under the authority of § 194.24(h).

The site inspection and approval process outlined in § 194.8 requires EPA to issue a **Federal Register** notice proposing the baseline compliance decision, docket the inspection report for public review, and seek public comment on the proposed decision for a period of 45 days. The report must describe the WC processes EPA inspected at the site, as well as their compliance with § 194.24 requirements.

## III. Proposed Baseline Compliance Decision

EPA has performed a baseline inspection of CH TRU waste characterization (WC) activities at ORNL–CCP (EPA Inspection No. EPA–ORNL–CCP–CH–11.07–8). The purpose of EPA's inspection was to verify that the waste characterization program implemented at ORNL–CCP for characterizing CH TRU, retrievably-stored, debris waste is technically adequate and meets the regulatory requirements at 40 CFR 194.24.

During the inspection, EPA evaluated the adequacy of the site's WC programs for CH TRU debris (S5000) waste to be disposed of at the WIPP. The Agency examined the following activities:

- Acceptable knowledge (AK) for CH retrievably-stored TRU debris waste (S5000)
- One nondestructive assay (NDA) system, the Drum Waste Assay System Imaging Passive-Active Neutron/Segmented Gamma Scanner (DWAS IPAN/SGS) system for characterizing debris (S5000) waste
- Real-time radiography (RTR) for CH retrievably-stored TRU debris waste (S5000)
- WIPP Waste Information System (WWIS) for CH retrievably-stored TRU debris waste (S5000)

During the inspection, ORNL–CCP personnel stated that load management will never be performed at the site and EPA did not evaluate this aspect during the inspection [see Section 8.1(5) of the inspection report]. Therefore, this proposed approval does not include load management for ORNL–CCP.

The EPA inspection team determined that the ORNL–CCP WC program for CH TRU waste was technically adequate. EPA is proposing to approve the ORNL–CCP CH TRU WC program in the configuration observed during this inspection and described in docketed inspection report and its' attached checklists (Attachments A.1 through A.4). This proposed approval includes the following:

(1) The AK process for CH retrievably-stored TRU debris wastes

(2) The DWAS IPAN/SGS system for assaying debris wastes

(3) The nondestructive examination (NDE) process of RTR for retrievably-stored debris wastes

(4) The WWIS process for tracking waste contents of debris wastes

ORNL–CCP must report and receive EPA approval of any Tier 1 (T1) changes to the ORNL–CCP WC activities from the date of the baseline inspection, and must notify EPA regarding Tier 2 (T2) changes according to Table 1, below. The format of Table 1 in this report closely follows the format used in previous CH baseline approval reports.

TABLE 1.—TIERING OF TRU WC PROCESSES IMPLEMENTED BY ORNL–CCP BASED ON NOVEMBER 13–15, 2007, SITE BASELINE INSPECTION

| WC process elements | ORNL–CCP WC T1 changes | ORNL–CCP WC T2 changes [a] |
|---|---|---|
| Acceptable Knowledge (AK) and Load Management. | Implementation of load management; AK (5).<br>Implementation of AK for wastes other than retrievably-stored debris (i.e., retrievably stored soil/gravel and solids and/or any type of newly-generated waste); AK (15). | Notification to EPA upon completion of AK accuracy reports; AK (2).<br>Notification to EPA upon completion of new versions or updates/substantive modifications [b] of the following:<br>—Changes to AK–NDA communications and memoranda; AK (3).<br>—Changes to site procedure; AK (4). |

TABLE 1.—TIERING OF TRU WC PROCESSES IMPLEMENTED BY ORNL–CCP BASED ON NOVEMBER 13–15, 2007, SITE BASELINE INSPECTION—Continued

| WC process elements | ORNL–CCP WC T1 changes | ORNL–CCP WC T2 changes [a] |
|---|---|---|
| | | —AK summaries that describe wastes beyond the 144 containers described in this report; AK (6).<br>—Radiological Discrepancy Resolution Reports (AK–AK and AK–NDA) pertinent to Waste Stream OR–NFS–CH–HET; AK (11).<br>—Completed Attachments 4 and 6 and associated memoranda for Waste Stream OR–NFS–CH–HET; AK (10) and (14).<br>—AK Summaries/Waste Stream Profile Forms (WSPFs) and AK documentation reports; AK (15). |
| Non Destructive Assay (NDA) | New equipment or physical modifications to approved equipment; [c] NDA (1).<br>Extension or changes to approved calibration range for approved equipment; NDA (2). | Notification to EPA upon completion of changes to software for approved equipment, operating range(s), and site procedures that require CBFO approval; NDA (2). |
| Real-Time Radiography (RTR) | N/A | Notification to EPA upon the following:<br>—Implementation of new RTR equipment or substantive changes [c] to approved RTR equipment; RTR (1).<br>—Completion of changes to site RTR procedures requiring CBFO approvals; RTR (2). |
| Visual Examination (VE) | Not approved at this time | Not approved at this time. |
| WIPP Waste Information System (WWIS) | Implementation of load management; WWIS (4). | Notification to EPA upon the following:<br>—Completion of changes to WWIS procedure(s) requiring CBFO approvals; WWIS (1). |

[a] Upon receiving EPA approval, ORNL–CCP will report all T2 changes to EPA at the end of each fiscal quarter.
[b] "Substantive changes" means changes with the potential to impact the site's WC activities or documentation thereof, excluding changes that are solely related to ES&H, nuclear safety, or RCRA, or that are editorial in nature.
[c] Modifications to approved equipment include all changes with the potential to affect NDA data relative to waste isolation and exclude minor changes, such as the addition of safety-related equipment.

### IV. Availability of the Baseline Inspection Report for Public Comment

EPA has placed the report discussing the results of the Agency's inspection of the ORNL–CCP Site in the public docket as described in **ADDRESSES**. In accordance with 40 CFR 194.8, EPA is providing the public 45 days to comment on these documents. The Agency requests comments on the proposed approval decision, as described in the inspection report. EPA will accept public comment on this notice and supplemental information as described in Section 1.B. above. EPA will not make a determination of compliance before the 45-day comment period ends. At the end of the public comment period, EPA will evaluate all relevant public comments and revise the inspection report as necessary. If appropriate, the Agency will then issue a final approval letter and inspection report, both of which will be posted on the WIPP Web site.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at the three EPA WIPP informational docket locations in Albuquerque, Carlsbad, and Santa Fe, New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: May 30, 2008.

**Elizabeth Cotsworth,**

*Director, Office of Radiation and Indoor Air.*

[FR Doc. E8–14006 Filed 6–19–08; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Notices

**AGENCY:** Federal Election Commission.

**DATE AND TIME:** Tuesday, June 17, 2008 at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:** Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. E8–13928 Filed 6–19–08; 8:45 am]

**BILLING CODE 6715–01–M**

## FEDERAL MARITIME COMMISSION

### Notice of Meeting

**AGENCY HOLDING THE MEETING:** Federal Maritime Commission.

**TIME AND DATE:** June 25, 2008—2 p.m.

**PLACE:** 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

**STATUS:** A portion of the meeting will be in Open Session and the remainder of the meeting will be in Closed Session.

**MATTERS TO BE CONSIDERED:**

### Open Session

(1) *FMC Agreement No. 201186*—Mobile Container Terminal Cooperative Working Agreement, effective July 4, 2008.

(2) *FMC Agreement No. 201187*—Port of Seattle/Port of Tacoma Puget Sound Air Quality Discussion Agreement, effective July 5, 2008.

(3) Privacy Act System of Records.

**Closed Session**

(1) Export Cargo Issues Status Report.
(2) Internal Administrative Practices and Personnel Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Karen V. Gregory, Assistant Secretary, (202) 523–5725.

**Karen V. Gregory,**

*Assistant Secretary.*

[FR Doc. 08–1374 Filed 6–18–08; 2:12 pm]

**BILLING CODE 6730–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 17, 2008.

**A. Federal Reserve Bank of Philadelphia** (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

*1. Reliance Bancorp, MHC, and Reliance Bancorp, Inc.*, to become bank holding companies in connection with the reorganization of Reliance Savings Bank, all of Altoona, Pennsylvania, from a state chartered mutual savings bank into a state chartered stock savings bank.

Board of Governors of the Federal Reserve System, June 17, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E8–14013 Filed 6–19–08; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL RESERVE SYSTEM

### Consumer Advisory Council; Solicitation of Nominations for Membership

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice.

**SUMMARY:** The Board is inviting the public to nominate qualified individuals for appointment to its Consumer Advisory Council, whose membership represents interests of consumers, communities, and the financial services industry. New members will be selected for three-year terms that will begin in January 2009. The Board expects to announce the selection of new members in early January.

**DATES:** Nominations must be received by August 29, 2008.

NOMINATIONS NOT RECEIVED BY AUGUST 29 MAY NOT BE CONSIDERED.

**ADDRESSES:** Nominations must include a résumé for each nominee. Electronic nominations are preferred. The appropriate form can be accessed at: *https://www.federalreserve.gov/secure/forms/cacnominationform.cfm*.

If electronic submission is not feasible, the nominations can be mailed (not sent by facsimile) to Sheila Maith, Advisor, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Kerslake, Secretary of the Council, Division of Consumer and Community Affairs, (202) 452–6470, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** The Consumer Advisory Council was established in 1976 at the direction of the Congress to advise the Federal Reserve Board on the exercise of its duties under the Consumer Credit Protection Act and on other consumer-related matters. The Council by law represents the interests both of consumers and of the financial services industry (15 U.S.C. 1691(b)). Under the Rules of Organization and Procedure of the Consumer Advisory Council (12 CFR 267.3), members serve three-year terms that are staggered to provide the Council with continuity.

New members will be selected for terms beginning January 1, 2009, to replace members whose terms expire in December 2008. The Board expects to announce its appointment of new members in early January. Nomination letters should include:

- A résumé;
- Information about past and present positions held by the nominee, dates, and description of responsibilities;
- A description of special knowledge, interests, or experience related to community reinvestment, consumer protection regulations, consumer credit, or other consumer financial services;
- Full name, title, organization name, organization description for both the nominee and the nominator;
- Current address, email address, telephone and fax numbers for both the nominee and the nominator; and
- Positions held in community organizations, and on councils and boards.

Individuals may nominate themselves.

The Board is interested in candidates who have familiarity with consumer financial services, community reinvestment, and consumer protection regulations, and who are willing to express their views. Candidates do not have to be experts on all levels of consumer financial services or community reinvestment, but they should possess some basic knowledge of the area. They must be able and willing to make the necessary time commitment to participate in conference calls, and prepare for and attend meetings three times a year (usually for two days, including committee meetings). The meetings are held at the Board's offices in Washington, DC. The Board pays travel expenses, lodging, and a nominal honorarium.

In making the appointments, the Board will seek to complement the background of continuing Council members in terms of affiliation and geographic representation, and to ensure the representation of women and minority groups. The Board may consider prior years' nominees and does not limit consideration to individuals nominated by the public when making its selection.

Council members whose terms end as of December 31, 2008, are:

Dorothy Bridges, Chief Executive Officer and President, Franklin National Bank

of Minneapolis, Minneapolis, Minnesota
Tony T. Brown, President and Chief Executive Officer, Uptown Consortium, Inc., Cincinnati, Ohio
Sarah Ludwig, Executive Director, Neighborhood Economic Development, Advocacy Project, New York, New York
Mark K. Metz, Senior Vice President and Deputy General Counsel, Wachovia Corporation, Charlotte, North Carolina
Lance Morgan, President, Ho-Chunk, Incorporated, Winnebago Tribe of Nebraska, Winnebago, Nebraska
Joshua Peirez, Chief Payment System Integrity Officer, MasterCard Worldwide, Purchase, New York
Anna McDonald Rentschler, Vice President & BSA Officer, Central Bancompany, Jefferson City, Missouri
Faith Arnold Schwartz, Executive Director, HOPE NOW Alliance, Washington, District of Columbia
Edward Sivak, Director of Policy and Evaluation, Enterprise Corporation of the Delta, Jackson, Mississippi
Alan White, Assistant Professor, Valparaiso University Law School, Valparaiso, Indiana

Council members whose terms continue through 2009 and 2010 are:

Michael Calhoun, President, Center for Responsible Lending, Durham, North Carolina
Alan Cameron, President and Chief Executive Officer, Idaho Credit Union League, Boise, Idaho
Jason Engel, Vice President & Chief Regulatory Counsel, Experian, Costa Mesa, California
Kathleen Engel, Associate Professor of Law, Cleveland-Marshall College of Law, Cleveland, Ohio
Joseph L. Falk, Consultant, Akerman Senterfitt, Miami, Florida
Louise J. Gissendaner, Senior Vice President, Director of Community Development, Fifth Third Bank, Cleveland, Ohio
Greta Harris, Vice President—Southeast Region, Local Initiatives Support Corporation, Richmond, Virginia
Patricia A. Hasson, President, Consumer Credit Counseling Service of Delaware Valley, Inc., Philadelphia, Pennsylvania
Thomas P. James, Senior Assistant Attorney General, Consumer Counsel, Office of the Illinois Attorney General, Consumer Fraud Bureau, Chicago, Illinois
Lorenzo Littles, Dallas Director, Enterprise Community Partners, Inc., Dallas, Texas
Saurabh Narain, Chief Fund Advisor, National Community Investment Fund, Chicago, Illinois
Ronald Phillips, President, Coastal Enterprises, Inc., Wiscasset, Maine
Kevin Rhein, Division President, Wells Fargo Card Services, Minneapolis, Minnesota
Edna Sawady, Managing Director, Market Innovations, Inc., Cleveland, Ohio
Shanna Smith, President and CEO, National Fair Housing Alliance, Washington, District of Columbia
H. Cooke Sunoo, Director, Asian Pacific Islander Small Business Program, Los Angeles, California
Jennifer Tescher, Director, Center for Financial Services Innovation, Chicago, Illinois
Stergios ''Terry'' Theologides, Executive Vice President, General Counsel, Morgan Stanley Home Loans, Fort Worth, Texas
Linda Tinney,Vice President, Community Development, West Metro Region Manager, U.S. Bank, Denver, Colorado
Luz L. Urrutia, Chief Executive Officer/ President, El Banco de Nuestra Comunidad, Roswell, Georgia

Board of Governors of the Federal Reserve System, June 16, 2008.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. E8–13929 Filed 6–19–08; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator for Health Information Technology; American Health Information Community Electronic Health Records Workgroup Meeting

**ACTION:** Announcement of meeting.

**SUMMARY:** This notice announces the 24th meeting of the American Health Information Community Electronic Health Records Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.).

**DATES:** July 17, 2008, from 1 p.m. to 4 p.m. [Eastern].

**ADDRESSES:** Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 1114. Please use 3rd Street entrance and bring photo ID for entry to a Federal building.

**FOR FURTHER INFORMATION CONTACT:** *http://www.hhs.gov/healthit/ahic/healthrecords/.*

**SUPPLEMENTARY INFORMATION:** The Workgroup will continue its discussion on ways to achieve widespread adoption of certified EHRs, minimizing gaps in adoption among providers.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/healthrecords/ehr_instruct.html.*

Dated: June 10, 2008.

**Judith Sparrow,**

*Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.*

[FR Doc. E8–13953 Filed 6–19–08; 8:45 am]

**BILLING CODE 4150–45–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator for Health Information Technology; American Health Information Community Population Health and Clinical Care Connections Workgroup Meeting

**ACTION:** Announcement of meeting.

**SUMMARY:** This notice announces the 28th meeting of the American Health Information Community Population Health and Clinical Care Connections Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.).

**DATES:** July 16, 2008, from 2 p.m. to 5 p.m. [Eastern Time].

**ADDRESSES:** Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 1114. Please use 3rd Street entrance and bring photo ID for entry to a Federal building.

**FOR FURTHER INFORMATION CONTACT:** *http://www.hhs.gov/healthit/ahic/population/.*

**SUPPLEMENTARY INFORMATION:** The Workgroup will continue its discussion on how to facilitate the flow of reliable health information among population health and clinical care systems necessary to protect and improve the public's health. The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/population/pop_instruct.html.*

Dated: June 10, 2008.

**Judith Sparrow,**

*Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.*

[FR Doc. E8–13954 Filed 6–19–08; 8:45 am]

**BILLING CODE 4150–45–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator for Health Information Technology; American Health Information Community Confidentiality, Privacy, & Security Workgroup Meeting

**ACTION:** Announcement of meeting.

**SUMMARY:** This notice announces the 21st meeting of the American Health Information Community Confidentiality, Privacy, & Security Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.).

**DATES:** July 24, 2008, from 1 p.m. to 5 p.m. [Eastern Time].

**ADDRESSES:** Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 1114. Please use 3rd Street entrance and bring photo ID for entry to a Federal building.

**FOR FURTHER INFORMATION:** *http://www.hhs.gov/healthit/ahic/confidentiality/.*

**SUPPLEMENTARY INFORMATION:** The Workgroup Members will continue discussing and evaluating the confidentiality, privacy, and security protections and requirements for participants in electronic health information exchange environments.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/cps_instruct.html.*

Dated: June 10, 2008.

**Judith Sparrow,**

*Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.*

[FR Doc. E8–13957 Filed 6–19–08; 8:45 am]

**BILLING CODE 4150–45–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator for Health Information Technology; American Health Information Community Chronic Care Workgroup Meeting

**ACTION:** Announcement of meeting.

**SUMMARY:** This notice announces the 26th meeting of the American Health Information Community Chronic Care Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.).

**DATES:** July 10, 2008, from 1 p.m. to 4 p.m., Eastern Time.

**ADDRESSES:** Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 1114. Please use the 3rd Street entrance and bring photo ID for entry to a Federal building.

**FOR FURTHER INFORMATION CONTACT:** *http://www.hhs.gov/healthit/ahic/chroniccare/.*

**SUPPLEMENTARY INFORMATION:** The workgroup will discuss progress made to date and future steps regarding secure messaging and remote care as it relates to the transition to the new AHIC.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/chroniccare/cc_instruct.html.*

Dated: June 10, 2008.

**Judith Sparrow,**

*Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.*

[FR Doc. E8–13958 Filed 6–19–08; 8:45 am]

**BILLING CODE 4150–45–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator for Health Information Technology; American Health Information Community Personalized Healthcare Workgroup Meeting

**ACTION:** Announcement of meeting.

**SUMMARY:** This notice announces the 17th meeting of the American Health Information Community Personalized Healthcare Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.).

**DATES:** July 11, 2008, from 2 p.m. to 4 p.m. [Eastern Time].

**ADDRESSES:** Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 1114. Please use 3rd Street entrance and bring photo ID for entry to a Federal building.

**FOR FURTHER INFORMATION CONTACT:** *http://www.hhs.gov/healthit/ahic/healthcare/.*

**SUPPLEMENTARY INFORMATION:** The Workgroup will discuss progress made to date and future steps regarding possible common data standards to incorporate interoperable, clinically useful genetic/genomic information and analytical tools into Electronic Health Records (EHRs), as it relates to the transition to the new AHIC.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/healthcare/phc_instruct.html.*

Dated: June 10, 2008.

**Judith Sparrow,**

*Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.*

[FR Doc. E8–13959 Filed 6–19–08; 8:45 am]

**BILLING CODE 4150–45–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Announcement of the Availability of the Physical Activity Guidelines Advisory Committee Report, and a Public Comment Period

**AGENCY:** Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

**ACTION:** Notice.

**AUTHORITY:** 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended. The Committee is governed by the provision of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

**SUMMARY:** The U.S. Department of Health and Human Services (HHS) (a) announces the availability of the *Physical Activity Guidelines Advisory Committee Report, 2008;* and (b) solicits written comments on the Report. The Physical Activity Guidelines Advisory Committee was charged with reviewing existing scientific literature to identify where there was sufficient evidence to develop a comprehensive set of specific physical activity recommendations. The report to the Secretary of HHS documents the scientific background and rationale for the issuance of physical activity guidelines. The report also identifies areas where further scientific research is needed. The Committee's evaluation of the science will be utilized by the Department to prepare the *Physical Activity Guidelines for Americans.* The intent is to issue physical activity guidelines for all Americans that will be tailored as necessary for specific subgroups of the population.

**DATES:** (a) The report of the Physical Activity Guidelines Advisory Committee (the Committee) will be available for comments on June 20, 2008. (b) Written comments on the Committee's report can be submitted and must be received on or before July 10, 2008.

**ADDRESSES:** (a) The final Report of the Committee is available electronically at *http://www.health.gov/PAguidelines* or

in hard copy for viewing at Suite LL100, 1101 Wootton Parkway, Rockville, Maryland 20852. (b) Comments may be submitted in any of three ways: (1) Through the comments link at *http://www.health.gov/PAguidelines;* (2) by e-mail to *PA.guidelines@hhs.gov;* or (3) mailed to CAPT Richard Troiano, HHS Office of Disease Prevention and Health Promotion, Office of Public Health and Science, 1101 Wootton Parkway, Suite LL100, Rockville, Maryland 20852, (phone 240–453–8280).

**FOR FURTHER INFORMATION CONTACT:** CAPT Richard Troiano, Executive Secretary, Physical Activity Guidelines Advisory Committee, Department of Health and Human Services, Office of Public Health and Science, Office of Disease Prevention and Health Promotion, Room LL–100, 1101 Wootton Parkway, Rockville, MD 20852, 240–453–8280 (telephone), 240–453–8281 (fax). Additional information is available on the Internet at *http://www.health.gov/PAguidelines.*

**SUPPLEMENTARY INFORMATION:**

### I. Physical Activity Guidelines Advisory Committee Report

The thirteen-member Physical Activity Guidelines Advisory Committee was appointed by the U.S. Department of Health and Human Services in June 2007 to assist the Department in providing sound and current physical activity guidance to Americans. The Committee has finalized its recommendations and submitted its report to the Secretary, Department of Health and Human Services. This Report will serve as the basis for the first edition of the Physical Activity Guidelines for Americans, which HHS expects to publish in October 2008.

The *Report of the Physical Activity Guidelines Advisory Committee, 2008* is available electronically at *http://www.health.gov/PAguidelines* or in hard copy for viewing (refer to the **ADDRESSES** section, above).

### II. Written Comment

By this notice, HHS is soliciting submission of written comments related to the Committee's Report, as well as views, information and data pertinent to preparation of the *Physical Activity Guidelines for Americans.* The Committee's Report will not be amended in response to comments. However, all comments will be considered in the preparation of the *Physical Activity Guidelines for Americans.* Comments must be received by July 10, 2008 to assure consideration. Comments may be submitted in any of three ways: (1) Through the comments link at *http://www.health.gov/PAguidelines;* (2) by e-mail to *PA.guidelines@hhs.gov;* or (3) mailed to CAPT Richard Troiano, HHS Office of Disease Prevention and Health Promotion, Office of Public Health and Science, 1101 Wootton Parkway, Suite LL100, Rockville, Maryland 20852, (phone 240–453–8280).

For those submitting written comments more than 5 pages in length, please provide a 1-page summary of key points related to the comments submitted.

Dated: June 16, 2008.

**Sarah R. Linde-Feucht,**

*Deputy Director, Office of Disease Prevention and Health Promotion.*

[FR Doc. E8–13952 Filed 6–19–08; 8:45 am]

**BILLING CODE 4150–32–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 73 FR 28483–84, dated May 16, 2008) is amended to reflect the reorganization of the National Office of Public Health Genomics, Coordinating Center for Health Promotion, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows: Delete in their entirety the title and functional statement for the *National Office of Public Health Genomics (CUE).*

After the *Extramural Research Program Office (CUC18), Office of the Director (CUC1), National Center for Chronic Disease Prevention and Health Promotion (CUC),* insert the following:

*Office of Public Health Genomics (CUC19).* The Office of Public Health Genomics (OPHG) provides leadership, policy guidance, coordination, technical expertise, and services to promote the development and implementation of the agency's genomics and public health initiatives. In carrying out this mission, OPHG: (1) Advises the CDC Director on the integration of genomics into health research and practice issues relevant to the agency; (2) assesses evolving research advances in genomics with emphasis on their relevance to public health issues and, in cooperation with federal and national institutions, identifies and develops activities for applying CDC's technical expertise for maximum public health benefit; (3) collaborates with CDC's National Centers (NC), other federal agencies, countries, and organizations, as appropriate, to assist NCs in the development of appropriate policy for the use of genomics within health research and practice initiatives for which they have responsibility; (4) coordinates plans for the allocation of genomics health resources and assists in the development of external funding sources for programs and projects; (5) coordinates cross-cutting CDC genomics and public health enterprises; (6) provides leadership in the development and implementation of strategic planning that extends the CDC Genomics and Disease Prevention Strategic Plan—*Integrating Advances in Human Genetics into Public Health Action (1997)* in the development of institutional capacity; (7) coordinates collaborations with external agencies, academia, and private industry partners, including administration, budgets, and technical assistance to assure that agency obligations are met; (8) guides and coordinates activities to integrate genomics competency into national health workforce development with emphasis on recruitment and career enhancement of CDC assignees; (9) promotes a continuum of public health research for translation and application of the basic research achievements of the Human Genome Project; (10) stimulates the integration of genomic advances into disease prevention program development; and (11) provides genomics and disease prevention expertise to NC projects, as appropriate and requested by NCs.

Dated: June 10, 2008.

**William H. Gimson,**

*Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. E8–13917 Filed 6–19–08; 8:45 am]

**BILLING CODE 4160–18–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–1812–NC]**

### Medicare and Medicaid Programs; Announcement of an Application From a Hospital Requesting Waiver for Organ Procurement Service Area

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice with comment period.

**SUMMARY:** This notice announces a hospital's request for a waiver from entering into an agreement with its designated organ procurement organization (OPO).

This notice requests comments from OPOs and the general public for our consideration in determining whether we should grant the requested waiver.

**DATE:** *Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 19, 2008.

**ADDRESSES:** In commenting, please refer to file code CMS–1812-NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' and enter the filecode to find the document accepting comments.

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1812–NC, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1812–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to either of the following addresses.

a. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

**FOR FURTHER INFORMATION CONTACT:** Mark A. Horney, (410) 786–4554.

**SUPPLEMENTARY INFORMATION:**

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

## I. Background

Organ Procurement Organizations (OPOs) are not-for-profit organizations that are responsible for the procurement, preservation, and transport of transplantable organs to transplant centers throughout the country. OPOs are certified by the Centers for Medicare & Medicaid Services (CMS) to recover or procure organs in CMS-defined exclusive designated service areas (DSAs), according to section 371(b)(1)(F) of the Public Health Service Act (42 U.S.C. 273(b)(1)(F)) and our regulations at 42 CFR 486.303 through 486.308. Once an OPO has been designated for a DSA, hospitals and critical access hospitals (CAHs) in that DSA that participate in Medicare and Medicaid are required to work with that OPO in procuring organs for transplant, according to section 1138(a)(1)(C) of the Social Security Act (the Act), and our regulations at § 482.45.

Section 1138(a)(1)(A)(iii) of the Act provides that a hospital or CAH must notify the designated OPO (for the DSA in which it is located) of potential organ donors. Under section 1138(a)(1)(C) of the Act, every participating hospital must have an agreement to identify potential donors only with its designated OPO.

However, section 1138(a)(2)(A) of the Act provides that a hospital or CAH may obtain from the Secretary a waiver of the above requirements under certain specified conditions. A waiver allows the hospital to have an agreement with an OPO other than the one designated by CMS for the DSA in which the hospital or CAH is located, if the hospital meets certain conditions specified in section 1138(a)(2)(A) of the Act. In addition, the Secretary may review additional criteria described in section 1138(a)(2)(B) of the Act to evaluate the hospital's request for a waiver.

Section 1138(a)(2)(A) of the Act states that in granting a waiver, the Secretary must determine that the waiver—(1) is expected to increase organ donations; and (2) will ensure equitable treatment of patients referred for transplants within the service area served by the designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement under the waiver. In making a waiver determination, section 1138(a)(2)(B) of the Act provides that the Secretary may consider, among other factors: (1) Cost-effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital's designated OPO due to the changes made in definitions for metropolitan statistical areas; and (4) the length and continuity of a hospital's relationship with an OPO other than the hospital's designated OPO. Under section 1138(a)(2)(D) of the Act, the Secretary is required to publish a notice of any waiver application received from a hospital within 30 days of receiving the application, and before making a final determination on the waiver

applicability offer interested parties an opportunity to comment in writing during the 60-day period beginning on the date the notice is published in the **Federal Register**.

The criteria that the Secretary uses to evaluate the waiver in these cases are the same as those described above under sections 1138(a)(2)(A) and (B) of the Act and have been incorporated into the regulations at § 486.308(e) and (f).

**II. Waiver Request Procedures**

In October 1995, we issued a Program Memorandum (Transmittal No. A–95–11) detailing the waiver process and discussing the information that hospitals must provide in requesting a waiver. We indicated that upon receipt of a waiver request, we would publish a **Federal Register** notice to solicit public comments, as required by section 1138(a)(2)(D) of the Act.

According to these requirements, we will review the request and comments received. During the review process, we may consult on an as-needed basis with the Public Health Service's Division of Transplantation, the United Network for Organ Sharing, and our regional offices. If necessary, we may request additional clarifying information from the applying hospital or others. We will then make a final determination on the waiver request and notify the hospital and the designated and requested OPOs.

**III. Hospital Waiver Request**

As permitted by § 486.308(e), McCullough-Hyde Memorial Hospital of Oxford, Ohio has requested a waiver in order to enter into an agreement with a designated OPO other than the OPO designated for the DSA in which the hospital is located. McCullough-Hyde Memorial Hospital is requesting a waiver to work with: LifeConnection of Ohio, 40 Wyoming Street, Dayton, OH 45409.

McCullough-Hyde Memorial Hospital's Designated OPO is: LifeCenter Organ Donor Network, 2925 Vernon Place, Suite 300, Cincinnati, OH 45219.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance, and Program No. 93.778, Medical Assistance Program)

Dated: June 9, 2008.

**Kerry Weems,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. E8–13821 Filed 6–19–08; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Notice of Public Comment on Tribal Consultation Sessions To Be Held on July 21, July 23, and July 31, 2008

**AGENCY:** Office of Head Start (OHS), Administration for Children and Families, HHS.

**ACTION:** Notice of Public Comment on Tribal Consultation Sessions to be held on July 21, July 23, and July 31, 2008.

**SUMMARY:** Pursuant to the Improving Head Start for School Readiness Act of 2007, Public Law 110–134, notice is hereby given of three one-day Tribal Consultation Sessions to be held between the Department of Health and Human Services, Administration for Children and Families, Office of Head Start leadership and the leadership of Tribal governments operating Head Start (including Early Head Start) programs. The purpose of these Consultation Sessions is to discuss ways to better meet the needs of Indian, including Alaska Native, children and their families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations [42.U.S.C. 9835, Section 640(l)(4)].

*Dates & Locations:*

July 21, 2008—Kansas City, Missouri.

July 23, 2008—Denver, Colorado.

July 31, 2008—Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Renée Perthuis, Acting Regional Program Manager, American Indian/Alaska Native Program Branch, Office of Head Start, e-mail *reneeaian@acf.hhs.gov* or (202) 260–1721. Register to attend one of these sessions online at *http://www.hsnrc.org.*

**SUPPLEMENTARY INFORMATION:** The Department of Health and Human Services would like to invite leaders of Tribal governments operating Head Start (including Early Head Start) programs to participate in a formal Consultation Session with OHS leadership. The Consultation Sessions will take place as follows:

July 21, 2008—Kansas City, Missouri.

July 23, 2008—Denver, Colorado.

July 31, 2008—Seattle, Washington.

Limited resources (fiscal, staff, and time constraints) preclude holding a Consultation Session in each ACF Region. These three Regions (VII, VIII, and X) have been selected in an attempt to accommodate the majority of Tribes operating Head Start and Early Head Start programs.

The purpose of the Consultation Sessions is to solicit input on ways to better meet the needs of Indian, including Alaska Native, children and their families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations. Specific topics will include policy, research, Head Start/Early Head Start conversion, program quality, and monitoring.

Tribal leaders and designated representatives interested in submitting written testimony or topics for the Consultation Session agenda should contact Renée Perthuis at *reneeaian@acf.hhs.gov.* Tribal leaders submitting testimony or topics should provide a brief description of the subject matter along with contact information for the proposed presenter.

The Consultation Sessions will be conducted with elected or appointed leaders of Tribal governments and their designated representatives [42.U.S.C. 9835, Section 640(l)(4)(A)]. Representatives from Tribal organizations and Native non-profit organizations are welcome to attend as observers. Those wishing to participate in the discussions must have a copy of a written resolution, voted on and approved by the Tribal government, which authorizes them to serve as a representative of the Tribe. This should be submitted not less than three days in advance of the Consultation Session to Renée Perthuis at 202–260–9336 (fax).

A detailed report of each Consultation Session will be prepared and made available within 90 days of each consultation to all Tribal governments receiving funds for Head Start (including Early Head Start) programs.

Dated: June 16, 2008.

**Patricia Brown,**

*Acting Director, Office of Head Start.*

[FR Doc. E8–14015 Filed 6–19–08; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–1986–F–0277] (formerly Docket No. 1986F–0364)**

### Danisco USA, Inc.; Withdrawal of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a

future filing, of a food additive petition (FAP 6A3958) proposing that the food additive regulations be amended to provide for the safe use of alitame as a sweetening agent or flavoring in food.

**FOR FURTHER INFORMATION CONTACT:** Blondell Anderson, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1304.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of September 29, 1986 (51 FR 34503), FDA announced that a food additive petition (FAP 6A3958) had been filed by Pfizer Central Research, Pfizer, Inc., 565 Taxter Rd., suite 590, Elmsford, NY 10523. The petition proposed to amend the food additive regulations in part 172 *Food Additives Permitted for Direct Addition to Food for Human Consumption* (21 CFR part 172) to provide for the safe use of alitame (L-α-aspartyl-*N*-2,2,4,4-tetramethyl-3-thietanyl)-D-alaninamide (CAS Reg. No. 80863–62–3) as a sweetening agent or flavoring in food. The rights to the petition currently belong to Danisco USA, Inc., 440 Saw Mill River Rd., Ardsley, NY 10502–2605. Danisco USA, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: June 12, 2008.

**Laura M. Tarantino,**

*Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.*

[FR Doc. E8–13998 Filed 6–19–08; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Service Administration

### Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

*Name:* Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL).

*Dates and Times:* July 16, 2008, 11 a.m.–4 p.m., EST. July 17, 2008, 11 a.m.–4 p.m., EST.

*Place:* (Audio Conference Call).

*Status:* The meeting will be open to the public; audio conference access limited only by availability of telephone ports.

*Purpose:* The Committee will be focusing on rural issues and how the Title VII Interdisciplinary, Community-Based Training Grant Programs identified under sections 751–756, Part D of the Public Health Service Act can respond to the current rural healthcare workforce needs. The Committee has invited speakers to highlight various topics related to rural healthcare workforce issues including, but not limited to, discipline specific shortages; recruitment and retention; health professions training; faculty development; telemedicine; and other specific rural health care issues. The meeting will afford committee members with the opportunity to identify and discuss the current status of the healthcare workforce in rural America and formulate appropriate recommendations to the Secretary and to the Congress regarding a variety of training strategies to address the health workforce shortage issues.

*Agenda:* The ACICBL agenda includes an overview of the Committee's general business activities, presentations by experts on rural healthcare workforce related issues, and discussion sessions specific for the development of recommendations to be addressed in the Eighth Annual ACICBL Report.

Agenda items are subject to change as dictated by the priorities of the Committee.

*Supplementary Information:* The ACICBL will meet on Wednesday, July 16 and Thursday, July 17, 2008 from 11 a.m. to 4 p.m. (EST) via audio conference. To participate in this audio conference call, please dial 1–888–697–8510 and provide the following information:

*Leader's Name:* Mr. Lou Coccodrilli.

*Passcode:* 2214090.

*For Further Information Contact:* Anyone requesting information regarding the Committee should contact Louis D. Coccodrilli, Designated Federal Official for the ACICBL, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Rm 9–36, 5600 Fishers Lane, Rockville, Maryland 20857; (301) 443–6950 or *lcoccodrilli@hrsa.gov.* Adriana Guerra, Public Health Fellow, can also be contacted for inquiries at (301) 443–6194 or *aguerra@hrsa.gov.*

Dated: June 17, 2008.

**Alexandra Huttinger,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. E8–14039 Filed 6–19–08; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Reimbursement of Travel and Subsistence Expenses Toward Living Organ Donation Eligibility Guidelines

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Publication of Change to Program Eligibility Guidelines.

**SUMMARY:** This notice finalizes an amendment to the eligibility guidelines proposed on March 5, 2008, in the **Federal Register** (73 FR 11930). The purpose of this notice was to solicit comments on the amendment to the Program Eligibility Guidelines proposed by HRSA concerning the Reimbursement of Travel and Subsistence Expenses Program.

**FOR FURTHER INFORMATION CONTACT:** James F. Burdick, M.D., Director, Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration (HRSA), Parklawn Building, Room 12C–06, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–7577; fax (301) 594–6095; or e-mail: *jburdick@hrsa.gov.*

**SUPPLEMENTARY INFORMATION:** In its final program eligibility guidelines, HRSA explained that ''[t]he Program will pay for a total of up to five trips; three for the donor and two for accompanying persons. The accompanying persons need not be the same each trip.'' HRSA proposes amending this paragraph to read: ''[t]he Program will pay for a total of up to five trips; three for the donor and two for accompanying persons. However, in cases in which the transplant center requests the donor to return to the transplant center for additional visits as a result of donor complications or other health related issues, the National Living Donor Assistance Center (NLDAC) may provide reimbursement for the additional visit(s) for the donor and an accompanying person. The accompanying persons need not be the same in each trip.'' The purpose of this proposed change is to accommodate individuals who experience donor complications or other health related issues relating to donation.

HRSA received one public comment on this request. The respondent endorses HRSA's proposed amendment because ''it will accommodate individuals who experience donor complications or other health related issues relating to donation''. HRSA wishes to thank everyone who reviewed this request even if a formal response was not sent to HRSA.

HRSA approved the amendment to the Reimbursement of Travel and Subsistence Expenses Program Eligibility Guidelines as published in the **Federal Register**. The amended eligibility criteria are included in this document. The amended eligibility criteria guidelines document is also available at *http://www.livingdonorassistancecenter.gov.*

**National Living Donor Assistance Center (NLDAC) Program Eligibility Guidelines as Amended**

Section 3 of the Organ Donation and Recovery Improvement Act (ODRIA), 42 U.S.C. 274f, establishes the authority and legislative parameters to provide reimbursement for travel and subsistence expenses incurred towards living organ donation. HRSA awarded a cooperative agreement to the Regents of the University of Michigan (Michigan), which partnered with the American Society of Transplant Surgeons (ASTS), to establish the National Living Donor Assistance Center (NLDAC) to operate this Program.

As provided for in the statutory authorization, this Program is intended to provide reimbursement only in those circumstances when payment cannot reasonably be covered by other sources of reimbursement. The NLDAC, under Federal law, cannot provide reimbursement to any living organ donor for travel and other qualifying expenses if the donor can receive reimbursement for these expenses from any of the following sources:

(1) Any State compensation program, an insurance policy, or any Federal or State health benefits program;

(2) An entity that provides health services on a prepaid basis; or

(3) The recipient of the organ.

In response to public solicitation of comments, a threshold of income eligibility for the recipient of the organ is 300 percent of the Department of Health and Human Services (HHS) Poverty Guidelines in effect at the time of the eligibility determination. The Program assumes that recipients whose income exceeds this level will have the ability to reimburse the living organ donor for the travel and subsistence expenses and any other qualifying expenses that can be authorized by the Secretary of HHS. The Program provides an exception to this rule for financial hardships. A transplant social worker, or appropriate transplant center representative, based on a complete recipient evaluation, can provide an official statement, notwithstanding the recipient's income level, that the recipient of the organ would face significant financial hardship if required to pay for the qualifying living organ donor expenses. A recipient's financial hardship is defined as circumstances in which the recipient's income exceeds 300 percent of the HHS Poverty Guidelines in effect at the time of the eligibility determination, but the individual will have difficulty paying the donor's expenses due to other significant expenses. Whether or not hardship exists in a particular case requires a fact-specific analysis; examples of significant expenses include circumstances such as paying for medical expenses not covered by insurance or providing significant financial support for a family member not living in the household (e.g., elderly parent). Each waiver request shall be made in writing. The NLDAC will review each written financial hardship request and (upon consultation with HRSA in complicated cases) make the determination as to whether reimbursement will be approved based on the merits of the request.

All persons who wish to become living organ donors are eligible to receive reimbursement for their travel and qualified expenses if they cannot receive reimbursement from the sources outlined above and if all the requirements outlined in the *Criteria for Donor Reimbursement Section* are satisfied. However, because of the limited funds available, prospective living donors who are most likely not able to cover these expenses will receive priority.

The ability to cover these expenses is determined based on an evaluation of (1) the donor and recipient's income, in relation to the HHS Poverty Guidelines (described in the 2007 HHS Poverty Guidelines table below), and (2) financial hardship. As a general matter, income refers to the donor or recipient's total household income. A donor may be able to demonstrate financial hardship, even if the donor's income exceeds 300 percent of the HHS Poverty Guidelines, if the donor will have difficulty paying the qualifying expenses due to other significant expenses. Although all requests will be reviewed on a case-by-case basis, examples of significant expenses include circumstances such as providing significant financial support for a family member not living in the household (e.g., elderly parent), loss of income due to donation process. Waiver requests by the transplant center, on behalf of the donor, shall be made in writing and shall clearly describe the circumstances for the waiver request. The NLDAC will review waiver requests and (upon consultation with HRSA in complicated cases) make determinations regarding the approval or disapproval of waivers.

Donors will be given preference in the following order of priority:

*Preference Category 1:* The donor's income and the recipient's income are each 300 percent or less of HHS Poverty Guidelines in effect at the time of the eligibility determination in their respective States of primary residence.

*Preference Category 2:* Although the donor's income exceeds 300 percent of the HHS Poverty Guidelines in effect in the State of primary residence at the time of the eligibility determination, the donor demonstrates financial hardship. The recipient's income is at or below 300 percent of the HHS Poverty Guidelines in effect in the State of primary residence at the time of the eligibility determination.

*Preference Category 3:* Any living organ donor, regardless of income or financial hardship, if the recipient's income is at or below 300 percent of the HHS Poverty Guidelines in effect in the recipient's State of primary residence at the time of the eligibility determination.

*Preference Category 4:* Any living organ donor, regardless of income or financial hardship, if the recipient (with income above 300 percent of the HHS Poverty Guidelines in effect in the State of primary residence at the time of the eligibility determination) demonstrates financial hardship.

The HHS Poverty Guidelines for 2007 (**Federal Register**, Vol. 72, No. 15, January 24, 2007, pp. 3147–3148) are shown in the table below.

2007 HHS POVERTY GUIDELINES

| Persons in family or household | 48 contiguous states and DC | Alaska | Hawaii |
|---|---|---|---|
| 1 | $10,210 | $12,770 | $11,750 |
| 2 | 13,690 | 17,120 | 15,750 |
| 3 | 17,170 | 21,470 | 19,750 |
| 4 | 20,650 | 25,820 | 23,750 |
| 5 | 24,130 | 30,170 | 27,750 |
| 6 | 27,610 | 34,520 | 31,750 |
| 7 | 31,090 | 38,870 | 35,750 |
| 8 | 34,570 | 43,220 | 39,750 |

2007 HHS POVERTY GUIDELINES—Continued

| Persons in family or household | 48 contiguous states and DC | Alaska | Hawaii |
|---|---|---|---|
| For each additional person, add | 3,480 | 4,350 | 4,000 |

Source: FEDERAL REGISTER, Vol. 72, No. 15, January 24, 2007, pp. 3147–3148.

These guidelines are updated periodically.

*Criteria for Donor Reimbursement*

1. Any individual who in good faith incurs travel and other qualifying expenses toward the intended donation of an organ.

2. Donor and recipient of the organ are U.S. citizens or lawfully admitted residents of the U.S.

3. Donor and recipient have primary residences in the U.S. or its territories.

4. Travel is originating from the donor's primary residence.

5. Donor and recipient certify that they understand and are in compliance with Section 301 of NOTA (42 U.S.C. 274e) which states in part ''* * * . It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce.''

6. The transplant center where the donation procedure occurs certifies to its status of good standing with the Organ Procurement and Transplantation Network (OPTN).

*Qualifying Expenses*

For the purposes of the Reimbursement of Travel and Subsistence Expenses toward Living Organ Donation Program, *qualifying expenses* presently include only travel, lodging, and meals and incidental expenses incurred by the donor and/or his/her accompanying person(s) as part of:

(1) Donor evaluation, clinic visit or hospitalization,

(2) Hospitalization for the living donor surgical procedure, and/or

(3) Medical or surgical follow-up clinic visit or hospitalization within 90 days following the living donation procedure.

The Program will pay for a total of up to five trips; three for the donor and two for accompanying persons. However, in cases in which the transplant center requests the donor to return to the transplant center for additional visits as a result of donor complications or other health related issues, NLDAC may provide reimbursement for the additional visit(s) for the donor and an accompanying person. The accompanying persons need not be the same in each trip.

The total Federal reimbursement for qualified expenses during the donation process for the donor and accompanying individuals shall not exceed $6,000.00. Reimbursement for qualifying expenses shall be provided at the Federal per-diem rate, except for hotel accommodation, which shall be reimbursed at no more than 150 percent of the Federal per-diem rate.

For donor and recipient pairs participating in a paired exchange program, the applicable eligibility criteria for the originally intended recipient shall be considered for the purpose of reimbursement of qualifying donor expenses even though the final recipient of the donated organ may not be the recipient identified in the original donor-recipient pair.

*Maximum Number of Prospective Donors per Recipient*

- Kidney: One donor at a time with a maximum of three donors.
- Liver: One donor at a time with a maximum of five donors.
- Lung: Two donors at a time with a maximum of six donors.

*Special Provisions*

Many factors may prevent the intended and willing donor from proceeding with the donation. Circumstances that would prevent the transplant or donation from proceeding include: present health status of the intended donor or recipient, perceived long-term risks to the intended donor, justified circumstances such as acts of God (e.g., major storms or hurricanes), or a circumstance when an intended donor proceeds toward donation in good faith, subject to a case-by-case evaluation by the NLDAC, but then elects not to pursue donation. In such cases, the intended donor and accompanying persons may receive reimbursement for qualified expenses incurred as if the donation had been completed. Under Program policy, a form will be filed with the Internal Revenue Service (IRS) reporting funds disbursed as income for expenses not incurred.

Dated: June 13, 2008.

**Elizabeth M. Duke,**

*Administrator.*

[FR Doc. E8–14036 Filed 6–19–08; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Notice of Intent To Prepare an Environmental Impact Statement for the Transport of Laboratory Personnel Exposed to Infectious Agents From Fort Detrick, Frederick, MD to the National Institutes of Health Clinical Center, Bethesda, MD

**SUMMARY:** In accordance with the National Environmental Policy Act, 42 U.S.C. 4321–4347, the NIH is issuing this notice to advise the public that an environmental impact statement will be prepared for the transport of laboratory personnel exposed to infectious agents from Fort Detrick, Frederick, Maryland to the National Institutes of Health Clinical Center, Bethesda, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Valerie Nottingham, Chief, Environmental Quality Branch, Division of Environmental Protection, Office of Research Facilities, NIH, B13/2S11, 9000 Rockville Pike, Bethesda, Maryland 20892, telephone 301–496–7775; fax 301–480–8056; or e-mail *nihnepa@mail.nih.gov.*

**SUPPLEMENTARY INFORMATION:** Fort Detrick is a U.S. Army Medical Command installation located in Frederick, Maryland, USA. Its 1,200 acres support a multi-governmental community that conducts biomedical research and development, medical material management, global medical communications and the study of foreign plant pathogens. It is home to the U.S. Army Medical Research and Materiel Command (USAMRMC), with its U.S. Army Medical Research Institute of Infectious Diseases (USAMRIID), as well as to the National Cancer Institute-Frederick (NCI-Frederick). It is the home of the National Interagency Biodefense Campus.

The National Institute of Allergy and Infectious Diseases (NIAID), a component of NIH, will be the occupant

of an Integrated Research Facility (IRF) currently being built at Fort Detrick as part of the National Interagency Biodefense Campus. The IRF will contain bio-safety level -2, -3, and -4 laboratory and animal research facilities for conducting biodefense and emerging infectious disease research. This laboratory will allow NIH to address a critical national shortage in bio-safety level-4 (BSL–4) capability.

The Clinical Center at the National Institutes of Health (NIH) in Bethesda, Maryland, is the nation's largest hospital devoted entirely to clinical research. It is a national resource that makes it possible to rapidly translate scientific observations and laboratory discoveries into new approaches for diagnosing, treating, and preventing disease. Approximately 1,500 studies are in progress at the NIH Clinical Center. Most are Phase I and Phase II clinical trials.

More than 350,000 patients, from all 50 states and throughout the world, have participated in clinical research at the Clinical Center since it opened in 1953. The Clinical Center promotes translational research—that is, the transference of scientific laboratory research into applications that benefit patient health and medical care. The ''bench-to-bedside'' approach adopted in 1953 locates patient care units in close proximity to cutting-edge laboratories doing related research. This facilitates interaction and collaboration among clinicians and researchers. Most important, patients and families in the Clinical Center benefit from the cutting-edge technologies and research and the compassionate care that are the signature of the NIH.

The Mark O. Hatfield Clinical Research Center (CRC) was opened in 2005. The facility houses inpatient units, day hospitals and research labs and connects to the original Warren Grant Magnuson Clinical Center. Together, the Magnuson and Hatfield buildings form the NIH Clinical Center. They serve the dual role of providing humane and healing patient care and the environment clinical researchers need to advance clinical science. The 870,000-square-foot Hatfield building has 242 inpatient beds and 90 day-hospital stations. This arrangement can be easily adapted to allow more inpatient beds and fewer day-hospital stations, or vice versa, because the new facility's design is highly flexible. The facility has unique ventilation systems that are designed to minimize the spread of infectious disease within the facility and includes isolation rooms equipped with special filtering and containment features.

The proposed action is to transport laboratory personnel in the event of potential exposure to infectious agents from the Fort Detrick Campus to the NIH Clinical Center for monitoring, evaluation, and if necessary, treatment.The CRC is well-equipped to deal with such scenarios, unlikely as they are.

In accordance with 40 CFR 1500–1508 and DHHS environmental procedures, NIH will prepare an Environmental Impact Statement (EIS) for the proposed transport of laboratory personnel exposed to infectious agents from the Fort Detrick Campus to the NIH Clinical Center for monitoring, evaluation, and if necessary, treatment.

Among the items the EIS will examine are the implications of the proposed action on human health, traffic and transportation, and other public services. To ensure that the public is afforded the greatest opportunity to participate in the planning and environmental review process, NIH is inviting oral and written comments on the proposed action and related environmental issues.

The NIH will be sponsoring two public Scoping Meetings to provide individuals an opportunity to share their ideas on the proposed action, including recommended alternatives and environmental issues the EIS should consider. The first meeting is planned for 6:30 p.m. on July 8, 2008 at the C. Burr Artz Library, 110 East Patrick Street, Frederick, Maryland 21701. The second meeting is planned for 7 p.m. on July 10, 2008 at the Bethesda-Chevy Chase Service Center, 4805 Edgemoor Lane, Bethesda, Maryland 20814. All interested parties are encouraged to attend. NIH has established a 45-day public comment period for the scoping process. Scoping comments must be postmarked no later than August 8, 2008 to ensure they are considered. All comments and questions on the EIS should be directed to Valerie Nottingham at the address listed above, telephone 301–496–7775; fax 301–480–8056; or e-mail *nihnepa@mail.nih.gov.*

Dated: June 13, 2008.

**Daniel Wheeland,**

*Director, Office of Research Facilities Development and Operations, National Institutes of Health.*

[FR Doc. E8–14033 Filed 6–19–08; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; NIH Support for Conferences and Scientific Meetings Special Emphasis Panel.

*Date:* July 2, 2008.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Prabha L. Atreya, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of Biomedical Imaging and Bioengineering, Bethesda, MD 20892, (301) 496–8633, *atreyapr@mail.nih.gov.*

Dated: June 13, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–13905 Filed 6–19–08; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1766–DR]**

### Indiana; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major

disaster for the State of Indiana (FEMA–1766–DR), dated June 8, 2008, and related determinations.

**EFFECTIVE DATE:** June 8, 2008.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated June 8, 2008, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Indiana resulting from severe storms and flooding beginning on June 6, 2008, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Indiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program in the designated areas and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs), unless you determine that the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 CFR 206.33(d).

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. If Other Needs Assistance and Hazard Mitigation are later warranted, Federal funding under these programs will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Michael H. Smith, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Indiana to have been affected adversely by this declared major disaster:

Bartholomew, Boone, Brown, Clay, Daviess, Dearborn, Decatur, Franklin, Greene, Henry, Jackson, Jefferson, Jennings, Johnson, Lawrence, Madison, Monroe, Morgan, Ohio, Owen, Randolph, Ripley, Rush, Shelby, Sullivan, Union, Vermillion, Vigo, and Wayne Counties for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–13939 Filed 6–19–08; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1766–DR]**

### Indiana; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1766–DR), dated June 8, 2008, and related determinations.

**EFFECTIVE DATE:** June 11, 2008.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Indiana is hereby amended to include the Individual Assistance program and the Hazard Mitigation Grant Program for following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 8, 2008.

Hancock and Marion Counties for Individual Assistance.

All counties in the State of Indiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–13941 Filed 6–19–08; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1766–DR]**

### Indiana; Amendment No. 3 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1766–DR), dated June 8, 2008, and related determinations.

**DATES:** *Effective Date:* June 11, 2008.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 8, 2008.

Bartholomew, Johnson, Monroe, Morgan, Vermillion, and Vigo Counties for Individual Assistance (already designated for emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–13942 Filed 6–19–08; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1752–DR]**

### Oklahoma; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–1752–DR), dated May 5, 2008, and related determinations.

**DATES:** *Effective Date:* June 12, 2008.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 5, 2008.

LeFlore County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–13938 Filed 6–19–08; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1766–DR]**

### Indiana; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Indiana (FEMA–1766–DR), dated June 8, 2008, and related determinations.

**EFFECTIVE DATE:** June 11, 2008.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this declared disaster is now May 30, 2008, and continuing, and the incident type is now severe storms, flooding, and tornadoes.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–13940 Filed 6–19–08; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

**[Docket Nos. TSA–2006–24191; Coast Guard-2006–24196]**

### Transportation Worker Identification Credential (TWIC); Enrollment Dates for the Ports of Pasco, WA; Coram, NY; and Sacramento, CA

**AGENCY:** Transportation Security Administration; United States Coast Guard; DHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Homeland Security (DHS) through the Transportation Security Administration (TSA) issues this notice of the dates for the beginning of the initial enrollment for the Transportation Worker Identification Credential (TWIC) for the Ports of Pasco, WA; Coram, NY; and Sacramento, CA.

**DATES:** TWIC enrollment begins in Pasco, Coram, and Sacramento on June 19, 2008.

**ADDRESSES:** You may view published documents and comments concerning the TWIC Final Rule, identified by the docket numbers of this notice, using any one of the following methods.

(1) Searching the Federal Docket Management System (FDMS) Web page at www.regulations.gov;

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html;* or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

**FOR FURTHER INFORMATION CONTACT:** James Orgill, TSA–19, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220. Transportation Threat Assessment and Credentialing (TTAC), TWIC Program, (571) 227–4545; e-mail: *credentialing@dhs.gov.*

**Background**

The Department of Homeland Security (DHS), through the United States Coast Guard and the Transportation Security Administration (TSA), issued a joint final rule (72 FR 3492; January 25, 2007) pursuant to the Maritime Transportation Security Act (MTSA), Pub. L. 107–295, 116 Stat. 2064 (November 25, 2002), and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Pub. L. 109–347 (October 13, 2006). This rule requires all credentialed merchant mariners and individuals with unescorted access to

secure areas of a regulated facility or vessel to obtain a TWIC. In this final rule, on page 3510, TSA and Coast Guard stated that a phased enrollment approach based upon risk assessment and cost/benefit would be used to implement the program nationwide, and that TSA would publish a notice in the **Federal Register** indicating when enrollment at a specific location will begin and when it is expected to terminate.

This notice provides the start date for TWIC initial enrollment at the Ports of Pasco, WA, Coram, NY, and Sacramento, CA on June 19, 2008. The Coast Guard will publish a separate notice in the **Federal Register** indicating when facilities within the Captain of the Port Zone Portland, including those in the Port of Pasco; Captain of the Port Zone Long Island Sound, including those in the Port of Coram; and Captain of the Port Zone San Francisco Bay, including those in the Port of Sacramento must comply with the portions of the final rule requiring TWIC to be used as an access control measure. That notice will be published at least 90 days before compliance is required.

To obtain information on the pre-enrollment and enrollment process, and enrollment locations, visit TSA's TWIC Web site at *http://www.tsa.gov/twic.*

Issued in Arlington, Virginia, on June 16, 2008.

**Rex Lovelady,**

*Program Manager, TWIC, Office of Transportation Threat Assessment and Credentialing, Transportation Security Administration.*

[FR Doc. E8–13934 Filed 6–19–08; 8:45 am]

**BILLING CODE 9110–05–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5186–N–25]**

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**EFFECTIVE DATE:** June 20, 2008.

**FOR FURTHER INFORMATION CONTACT:** Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 12, 2008.

**Mark R. Johnston,**

*Deputy Assistant Secretary for Special Needs.*

[FR Doc. E8–13697 Filed 6–19–08; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R4–R–2008–N0103; 40136–1265–0000–S3]**

### Lake Wales Ridge National Wildlife Refuge, Polk and Highlands Counties, FL

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) and associated National Environmental Policy Act (NEPA) documents for Lake Wales Ridge National Wildlife Refuge. We provide this notice in compliance with our CCP policy to advise other agencies, Tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process.

**DATES:** To ensure consideration, we must receive your written comments by July 21, 2008. Special mailings, newspaper articles, and other media announcements will be used to inform the public and State and local government agencies of the opportunities for input throughout the planning process. A public scoping meeting will be held early in the CCP development process. The date, time, and place for the meeting will be announced in the local media.

**ADDRESSES:** Comments, questions, and requests for information should be sent to: Bill Miller, Merritt Island National Wildlife Refuge, P.O. Box 6504, Titusville, FL 32782–6504; Fax: 321/861–1276; Electronic mail: *LakeWalesRidgeCCP@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Bill Miller; Telephone: 561/715–0023.

**SUPPLEMENTARY INFORMATION:**

#### Introduction

With this notice, we initiate our process for developing a CCP for Lake Wales Ridge National Wildlife Refuge in Highlands and Polk Counties, Florida.

This notice complies with our CCP policy to (1) advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this refuge; and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

#### Background

*The CCP Process*

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing to the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

Each unit of the National Wildlife Refuge System is established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the National Wildlife Refuge System mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals

and objectives for the best possible conservation approach to this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with the refuge's establishing purposes and the mission of the National Wildlife Refuge System.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of Lake Wales Ridge National Wildlife Refuge. Special mailings, newspaper articles, and other media outlets will be used to announce opportunities for input throughout the planning process.

We will conduct the environmental assessment in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 et seq.); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Lake Wales Ridge National Wildlife Refuge is managed as a unit of the Merritt Island National Wildlife Refuge Complex in Titusville, FL, which is about 100 miles away. Other refuges in the Complex include St. Johns, Pelican Island, Archie Carr, and Lake Woodruff.

The refuge was established in 1993 for the protection of threatened and endangered plants and animals: '' * * * to conserve (A) fish or wildlife which are listed as endangered species * * * or (B) plants * * * '' (16 U.S.C. 1534, Endangered Species Act).

The refuge is composed of four tracts totaling ±1,857 acres in Polk and Highlands Counties along the south central Florida ridge. In Florida geologic terms, the ridge is an ancient beach and sand dune system formed about 2.5 million years ago. Due to its age and historic geological isolation, many of the plants that inhabit ridge ecosystems are unique and found nowhere else in the world. The refuge contains prime examples of several highly imperiled ecosystems, including Florida scrub and sandhill, as well as over half of the federally listed plant species endemic to the Lake Wales Ridge. The refuge protects 22 federally listed plants, 40 endemic plants, at least 4 listed animals, and more than 40 endemic invertebrates. Because of the potential for impacts to these plants and animals, the refuge has not been opened to the public.

Each of the four tracts comprising the refuge has its own particular merits and value, as listed. The Carter Creek unit is an excellent example of endemic-rich Lake Wales Ridge sandhill, with nine listed plants; it contains one of only a dozen populations of Florida ziziphus, one of the rarest and most endangered plants in the State. The tracts making up the Flamingo Villas unit have 10 listed species and the only protected populations of Garrett's scrub balm, a woody mint known only from Highlands County. The Lake McLeod unit has 11 listed plants and is the only protected site for scrub lupine, another extremely rare plant. The Snell Creek site contains one of the last remaining tracts of undisturbed sandhill in northern Polk County.

Ridge ecosystems have been reduced by 85 percent from the originally estimated 80,000-acre extent due to development and land use changes. The refuge exists as part of a network of scrub preserves, owned by the State of Florida, The Nature Conservancy, Archbold Biological Station, and Polk and Highland Counties, with similar purposes to protect and manage what remains of this unique ridge ecosystem.

**Public Availability and Comments**

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: May 19, 2008.

**Cynthia K. Dohner,**

*Acting Regional Director.*

[FR Doc. E8–13927 Filed 6–19–08; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Final Environmental Impact Statement for the Proposed Integrated Resource Management Plan for the Spokane Indian Reservation, Stevens County, WA

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public that the Bureau of Indian Affairs (BIA), in cooperation with the Spokane Tribe of Indians (Tribe), intends to file a Final Environmental Impact Statement (FEIS) for the proposed Integrated Resource Management Plan (IRMP) for the Spokane Indian Reservation, Washington, with the U.S. Environmental Protection Agency, and that the FEIS is now available to the public. The proposed action would update the Tribe's existing IRMP, in order to continue long term resource management.

**DATES:** The Record of Decision on the proposed action will be issued on or after July 22, 2008. Any comments on the FEIS must arrive by July 21, 2008.

**ADDRESSES:** You may mail or hand carry written comments to Donna R. Smith, Geologist, Bureau of Indian Affairs, Spokane Agency, Agency Square, Building 201, P.O. Box 389, Wellpinit, Washington 99040. Please include your name and mailing address with your comments. Persons wishing copies of this FEIS may contact Donna R. Smith at the above address, by telephone at (509) 258–4561, or by fax at (509) 258–7542. The FEIS is also available on line at *http://www.spokanetribe.com.*

**FOR FURTHER INFORMATION CONTACT:** Donna Smith, (509) 258–4561.

**SUPPLEMENTARY INFORMATION:** The proposed BIA action is approval of the Tribe's updating and implementation of an IRMP. The proposed IRMP covers a period of 10 years and addresses resources of value on all of the approximately 157,000 acres within the boundaries of the Spokane Indian Reservation and/or under the jurisdiction of the Tribe, including, but not limited to, air quality, cultural resources, fisheries, wildlife, timber, surface and ground water resources, range, agriculture, recreation, mining, residential development, economic development land uses, and infrastructure. The updated IRMP would be implemented in fiscal year 2008 by both the BIA and Spokane Tribe

The FEIS analyzes a range of feasible alternatives to address both current and projected needs over the next 10 years. These alternatives are as follows: (#1) No Action, which would continue the existing IRMP with no change in management style; (#2) Preservation and Cultural Emphasis, which would provide the greatest level of environmental and cultural protection; (#3) Preservation of All Future Uses (preferred alternative), with outcome based performance which would balance ecological and cultural values with the need for income; (#4) Growth

and Economic Emphasis, which would allow decisions to be driven by economics; and (#5) Individual Freedom Emphasis, which would allow individuals maximum freedom to develop land within the current regulatory framework.

The BIA has afforded other government agencies and the public ample opportunity to participate in the preparation of this Environmental Impact Statement (EIS). The BIA published a notice of intent to prepare an EIS for the proposed action in the **Federal Register** on January 9, 2003 (68 FR 1190). The BIA held a public scoping meeting on January 23, 2003, in Wellpinit, Washington. A Notice of Availability for the Draft EIS was published in the **Federal Register** on September 6, 2006 (71 FR 52568). The document was available for public comment from September 6 to November 6, 2006, and a public hearing was held on September 27, 2006, in Wellpinit, Washington.

**Public Comment Availability**

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority**

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: May 20, 2008.

**Carl J. Artman,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. E8–13999 Filed 6–19–08; 8:45 am]

**BILLING CODE 4310–W7–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### Meeting of the California Desert Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet in formal session on Friday, July 25 from 10 a.m. to 3 p.m. and Saturday, July 26 from 8 a.m. to 3 p.m. at the Riverside Marriot, 3400 Market St., Riverside, CA 92501.

Agenda topics for the two sessions will include updates by Council members and reports from the BLM District Manager and five field office managers. Additional agenda topics are being developed. Once finalized, the meeting agenda will be published in a news release prior to the meeting and posted on the BLM California state Web site at *http://www.blm.gov/ca/news/rac.html.*

**SUPPLEMENTARY INFORMATION:** All Desert District Advisory Council meetings are open to the public. Public comment for items not on the agenda will be scheduled at the beginning of the meeting Saturday morning. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

While the Saturday meeting is tentatively scheduled from 8 a.m. to 3 p.m., the meeting could conclude prior to 3 p.m. should the Council conclude its presentations and discussions. Therefore, members of the public interested in a particular agenda item or discussion should schedule their arrival accordingly.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, External Affairs, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

**FOR FURTHER INFORMATION CONTACT:** Stephen Razo, BLM California Desert District, External Affairs, (951) 697–5217.

Dated: June 16, 2008.

**Steven J. Borchard,**

*District Manager.*

[FR Doc. E8–13989 Filed 6–19–08; 8:45 am]

**BILLING CODE 4310–40–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Settlement Agreement Under the Clean Water Act

Notice is hereby given that, for a period of 30 days, the United States will receive public comments on a proposed Consent Decree in *United States* v. *Magellan Pipeline Company L.P.* (Civil Action No. 08–CV2272 JAR/DJW), which was lodged with the United States District Court for the District of Kansas on June 16, 2008. This proposed Consent Decree was lodged simultaneously with the Complaint in this Clean Water Act case against Magellan Pipeline Company, L.P.

The Complaint alleges that Magellan is civilly liable for violation of the Clean Water Act (''CWA''), 33 U.S.C. 1251 *et seq.*, as amended by the Oil Pollution Act of 1990 (''OPA''), 33 U.S.C. 2701 *et seq.* The Complaint seeks civil penalties and injunctive relief for eleven discharges of gasoline, diesel fuel and other petroleum products into navigable waters of the United States or adjoining shorelines from the Pipeline in the states of Kansas, Iowa, Minnesota, Illinois and Arkansas. The Complaint also alleges that Defendant violated EPA's Spill Prevention, Containment and Countermeasure regulations issued pursuant to section 311(j) of the CWA, 33 U.S.C. 1321(j), at two terminal facilities located in Roca, Nebraska and Coralville, Iowa. Under the settlement, Magellan will pay a civil penalty of $5.3 million. In addition, the settlement requires Magellan to undertake various measures aimed to prevent and expedite detection of pipeline leaks and ruptures.

Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and may be submitted to: P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or via e-mail to *pubcomment-ees.enrd@usdoj.gov*, and should refer to *United States* v. *Magellan Pipeline Company*, L.P., D.J. Ref. 90–5–1–1–06074/3.

The Consent Decree may be examined at the Office of the United States Attorney, District of Kansas, 1200 Epic Center, 301 N. Main, Wichita, KS 67202. During the public comment period the Magellan Consent Decree may also be examined on the following Department of Justice Web site: *http://*

*www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Magellan Consent Decree also may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $49.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Maureen M. Katz,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. E8–13935 Filed 6–19–08; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Importer of Controlled Substances; Notice of Registration

By Notice dated April 17, 2006 and published in the **Federal Register** on April 21, 2006, (71 FR 20729), and as corrected by Notice dated May 15, 2006, and published in the **Federal Register** on May 22, 2006, (71 FR 29354), Rhodes Technologies, 498 Washington Street, Coventry, Rhode Island 02816, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances in schedule II:

| Drug | Schedule |
|---|---|
| Raw Opium (9600) | II |
| Concentrate of Poppy Straw (9670). | II |

The company plans to import the basic classes of controlled substances to manufacture bulk active pharmaceutical ingredients. The company is registered with DEA as a manufacturer of several controlled substances that are manufactured from raw opium and concentrate of poppy straw.

Comments, objections, and requests for a hearing were received. However, after a thorough review of this matter DEA has concluded that, per 21 CFR 1301.34(a), the objectors are not entitled to a hearing. As explained in the Correction to Notice of Application dated January 18, 2007, pertaining to Rhodes Technologies *et al.*, (72 FR 3417, January 25, 2007), comments and requests for hearings on applications to import narcotic raw material are not appropriate.

DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Rhodes Technologies to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA investigated Rhodes Technologies to ensure that the company's registration would be consistent with the public interest. The investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. After investigating these and other matters, I have concluded that registering Rhodes Technologies to import raw opium and concentrate of poppy straw is consistent with the factors set forth in 21 U.S.C. 823(a)(2)–(6), as incorporated in 21 U.S.C. 958(a).

The DEA also considered whether the registration of Rhodes Technologies would be consistent with 21 U.S.C. 823(a)(1) that requires the DEA to limit the importation of certain controlled substances (including raw opium and concentrate of poppy straw) ''to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions * * *.'' I find that the establishments currently registered with DEA to import raw opium and concentrate of poppy straw provide an adequate and uninterrupted supply of those substances. The DEA found no evidence that the supply of such substances was inadequate or interrupted in supplying the needs of the United States for legitimate medical, scientific, research, and industrial purposes.

However, I find that the adequate and uninterrupted supply of these substances did not occur under adequately competitive conditions. Specifically, I find that Rhodes Technologies has demonstrated that the current importers of raw opium and concentrate of poppy straw have, in some cases, refused to sell these substances to Rhodes Technologies. Some of the current importers also use their position to demand restrictive contractual terms when selling narcotic raw material to Rhodes Technologies. Many of the current importers also manufacture active pharmaceutical ingredients or have corporate ties to firms that manufacture active pharmaceutical ingredients from raw opium and concentrate of poppy straw. These importers have a direct financial interest in refusing to sell narcotic raw material to Rhodes Technologies or in demanding significant contractual restrictions when selling narcotic raw material to Rhodes Technologies.

Based on the information in the investigative file that is summarized herein, I find that the current importation of raw opium and concentrate of poppy straw is not being conducted under adequately competitive conditions. Therefore, under 21 U.S.C. 823(a)(1), DEA may grant the application of Rhodes Technologies to import raw opium and concentrate of poppy straw. Having already found that registering Rhodes Technologies to import raw opium and concentrate of poppy straw is consistent with the factors set forth in 21 U.S.C. 823(a)(2)–(6), I find that the statutory factor set forth in 21 U.S.C. 823(a)(1) also weighs in favor of granting the application.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: June 16, 2008.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E8–13912 Filed 6–19–08; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 20, 2008 and published in the **Federal Register** on February 29, 2008, (73 FR 11149), Stepan Company, Natural Products Dept., 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

| Drug | Schedule |
|---|---|
| Cocaine (9041) | II |
| Benzoylecgonine (9180) | II |

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Coca Leaves (9040) has been removed as a bulk manufacturing drug code for the company.

No comments or objections have been received. DEA has considered the

factors in 21 U.S.C. 823(a) and determined that the registration of Stepan Company to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Stepan Company to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: June 13, 2008.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E8–13911 Filed 6–19–08; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review: Comment Request

June 16, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Veterans' Employment and Training Service (VETS), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316 / Fax: 202–395–6974 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Veterans' Employment and Training Service.

*Type of Review:* New Collection (Request for a new OMB Control Number).

*Title of Collection:* Veteran Employment Outcomes Study.

*OMB Control Number:* 1293–0NEW.

*Affected Public:* Individuals or Households.

*Estimated Number of Respondents:* 1,068.

*Estimated Total Annual Burden Hours:* 267.

*Estimated Total Annual Costs Burden:* $0.

*Description:* The purpose of this study is to learn more about veteran users of One-Stop Career Centers who do not appear to have had successful employment outcomes. The survey data collected will help determine to what extent the apparent lack of successful outcomes for veteran job seekers, as measured by the participating states. Further, this collection will allow DOL to learn key characteristics and reasons why some veterans have difficulty or fail to find jobs, learn what services were received and what veterans thought of them, and learn what services were not received and whether they were needed. For additional information, see related notice published at 73 FR 11956 on March 5, 2008.

**Darrin A. King,**

*Acting Departmental Clearance Officer.*

[FR Doc. E8–13981 Filed 6–19–08; 8:45 am]

**BILLING CODE 4510–79–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–61,698; TA–W–61,698B]**

### Dan River, Inc., 1325 Avenue of the Americas, New York, New York; Including Employees in Support of Dan River, Inc., 1325 Avenue of the Americas, New York, New York Operating at Various Locations in the State of New Jersey; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on July 13, 2007, applicable to workers of Dan River, Inc., 1325 Avenue of The Americas, New York, New York. The notice was published in the **Federal Register** on June 3, 2008 (73 FR 31716). The certification was amended on May 27, 2008 to include an employee of the subject firm operating out of Randolph, New Jersey. The notice was published in the **Federal Register** on June 3, 2008 (73 FR 31713).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm.

New information shows that worker separations have occurred involving employees in support of and under the control of the New York, New York facility of Dan River, Inc., 1325 Avenue of The Americas, New York, New York operating out of various locations in the state of New Jersey.

Based on these findings, the Department is amending this certification to include employee in support of 1325 Avenue of The Americas, New York, New York facility operating out of various locations in state of New Jersey.

The intent of the Department's certification is to include all workers of Dan River, Inc., 1325 Avenue of The Americas, New York, New York who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–61,698 is hereby issued as follows:

All workers of Dan River, Inc., 1325 Avenue of The Americas, New York, New York (TA–W–61,698), including employees in support of Dan River, Inc., 1325 Avenue of The

Americas, New York, New York, operating at various locations in the state of New Jersey (TA–W–61,698B), who became totally or partially separated from employment on or after November 6, 2006, through July 13, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 11th day of June 2008.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–13975 Filed 6–19–08; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–63,067]**

### Heatcraft Refrigeration, a Subsidiary of Lennox International, Including On-Site Leased Workers From Spherion and Trillium Staffing, Danville, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 17, 2008, applicable to workers of Heatcraft Refrigeration, a subsidiary of Lennox International, including on-site leased workers from Spherion, Danville, Illinois. The notice was published in the **Federal Register** on May 2, 2008 (73 FR 24318).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of commercial refrigeration and HVAC equipment.

New information shows that leased workers from Trillium Staffing were employed on-site at the Danville, Illinois location of Heatcraft Refrigeration, a subsidiary of Lennox International. The Department has determined that these workers were sufficiently under the control of the subject firm.

Based on these findings, the Department is amending this certification to include leased workers from Trillium Staffing working on-site at the Danville, Illinois location of the subject firm.

The intent of the Department's certification is to include all workers employed at Heatcraft Refrigeration, a subsidiary of Lennox International who were adversely affected by a shift in production of commercial refrigeration and HVAC equipment to Mexico.

The amended notice applicable to TA–W–63,067 is hereby issued as follows:

All workers of Heatcraft Refrigeration, a subsidiary of Lennox International, including on-site leased workers from Spherion and Trillium Staffing, Danville, Illinois, who became totally or partially separated from employment on or after March 25, 2007, through April 17, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 9th day of June 2008.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–13976 Filed 6–19–08; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–63,301]**

### Quebecor World Northeast Graphics, Inc., Including On-Site Leased Workers From Ahead Human Resources and Sun Chemical Company, North Haven, CT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on May 16, 2008, applicable to workers of Quebecor World Northeast Graphics, Inc., including on-site temporary workers from Ahead Human Resources, North Haven, Connecticut. The notice was published in the **Federal Register** on May 29, 2008 (73 FR 30977).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of general commercial printed products.

New information shows that worker separations have occurred involving employees of Sun Chemical Company employed on-site at the North Haven, Connecticut location of Quebecor World Northeast Graphics, Inc. The Sun Chemical workers produced the ink used in the production of general commercial printed products at the North Haven, Connecticut location of the subject firm, and are sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include all workers of Sun Chemical working on-site at the North Haven, Connecticut location of the subject firm.

The intent of the Department's certification is to include all workers employed at Quebecor World Northeast Graphics, Inc., North Haven, Connecticut who were adversely affected by a shift in production of general commercial printed products to Canada.

The amended notice applicable to TA–W–63,301 is hereby issued as follows:

All workers of Quebecor World Northeast Graphics, Inc., including on-site leased workers from Ahead Human Resources and Sun Chemical, North Haven, Connecticut, who became totally or partially separated from employment on or after May 2, 2007, through May 16, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 11th day of June 2008.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–13978 Filed 6–19–08; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–61,265]**

### O'Bryan Brothers, Inc., Including On-Site Leased Workers of Grapevine Staffing LLC, Leon, IA; Amended Notice of Revised Determination on Reconsideration

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Notice of Revised Determination on Reconsideration on May 16, 2007. The notice was published in the **Federal Register** on May 24, 2007 (72 FR 29183).

At the request of the State agency, the Department reviewed the Notice of Revised Determination on Reconsideration for workers of the subject firm. The workers performed sewing functions and the production of marker patterns.

New information shows that leased workers of Grapevine Staffing LLC were employed on-site at the Leon, Iowa location of O'Bryan Brothers, Inc. The Department has determined that these workers were sufficiently under the control of O'Bryan Brothers, Inc. to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers of Grapevine Staffing LLC working on-site at the Leon, Iowa location of the subject firm.

The intent of the Department's certification is to include all workers employed at O'Bryan Brothers, Inc., Leon, Iowa who were adversely impacted by shifting sewing functions and the production of marker patterns to Mexico.

The amended notice applicable to TA–W–61,265 is hereby issued as follows:

All workers of O'Bryan Brothers, Inc., including on-site leased workers of Grapevine Staffing LLC, Leon, Iowa, who became totally or partially separated from employment on or after April 6, 2006, through May 16, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 13th day of June 2008.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–13974 Filed 6–19–08; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Availability of Funds and Solicitation for Grant Applications (SGA) Under the Employment and Training Administration's (ETA) Technology-Based Learning (TBL) Initiative

*Announcement Type:* New, Notice of Solicitation for Grant Applications.

*Funding Opportunity Number:* SGA/DFA PY–08–04.

Catalog of Federal Assistance Number: 17.269.

*Key Dates:* The closing date for receipt of applications under this announcement is August 19, 2008. Applications must be received at the address below no later than 5 p.m. (Eastern Time). Application and submission information is explained in detail in Part V of this SGA. A Webinar for prospective applicants will be held for this grant competition on July 29, 2008, 2 p.m. EDT. Access information for the Webinar will be posted on the U.S. Department of Labor's (DOL), Employment and Training Administration (ETA) Web site at: *http://www.workforce3one.org.*

**SUMMARY:** ETA announces the availability of approximately $10 million in grant funds under the TBL Initiative to be awarded through a competitive process. The purpose of the Initiative is to expand access to training resulting in an increased number of workers trained, particularly in high-growth, high-demand occupations, and to meet the needs of industry for skilled employees.

This SGA is designed to expand the vital role of TBL in helping workers quickly acquire the training and skills they need to be successful in today's global economy, and thereby increase the nation's economic competitiveness and growth. Desired outcomes include an increased amount of workforce training available online and/or enhanced with TBL, and an increased number of people trained in high-growth jobs through the use of TBL methods.

Funds will be awarded to public, private for-profit, and private non-profit organizations, including educational institutions and registered apprenticeship sponsors. Partnership with the publicly-funded workforce investment system is required.

This solicitation provides background information and describes the application submission requirements, outlines the process that eligible entities must use to apply for funds covered by this solicitation, and details how grantees will be selected.

**ADDRESSES:** Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Mamie Williams, Reference SGA/DFA PY 08–04, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210. Facsimile applications will not be accepted. Information about applying online can be found in Part V.C. of this document. Applicants are advised that mail delivery in the Washington, DC area may be delayed due to mail decontamination procedures. Hand delivered proposals will be received at the above address.

**SUPPLEMENTARY INFORMATION:** This solicitation consists of nine parts:

Part I provides background information on TBL.

Part II describes award information.

Part III describes eligibility information.

Part IV describes the application and submission process.

Part V describes the applications review process.

Part VI contains award administration information.

Part VII contains DOL agency contact information.

Part VIII lists additional resources of interest to applicants.

#### Part I. Background Information

*1. TBL in the Innovation Economy*

The world is now witnessing one of the greatest technological transformations in history. Evolutions in technology and information have ushered in the globalization of the economic marketplace. This globalization is marked by tremendous advances in communications, travel, and free trade—allowing individuals unprecedented access to commerce from almost anywhere in the world. At the same time, American businesses now must compete in this global marketplace.

Global competition is typically seen as a national challenge. In reality, competition lies within regions where companies, workers, researchers, entrepreneurs and governments come together to create a competitive advantage in the global marketplace. That advantage stems from the ability to transform new ideas and new knowledge into advanced, high quality products or services—in other words, to innovate.

Areas that are successful in creating a competitive advantage demonstrate the ability to organize ''innovation assets''—people, institutions, capital and infrastructure—to generate growth and prosperity in the region's economy. These regions are successful because they have connected key elements such as workforce skills and lifelong learning strategies; investments and entrepreneurial strategies; and regional infrastructure and economic development strategies.

TBL could strengthen the innovation assets of individuals by increasing their workforce skills and supporting lifelong learning. TBL, also commonly known as e-learning, constitutes learning via electronic technology, including the Internet, intranet sites, satellite broadcasts, audio and video

conferencing, Internet bulletin boards, chat rooms, Web casts, simulations, gaming, podcasting, and a variety of mobile options. TBL is an umbrella term, which also encompasses related terms, such as distance learning, on-line learning, Web-based learning (learning that occurs via the Internet), CDs and DVDs, and computer-based learning (learning through the use of dedicated personal computers).

TBL can be synchronous (learning occurs when instructors and learners meet at a specific time in a physical or virtual classroom), or it can be asynchronous (learning does not occur at a pre-specified time and may be self-paced). Blended learning combines aspects of synchronous and asynchronous, as well as virtual and face-to-face instruction.

TBL approaches and methods have expanded in recent years due to the proliferation of computer connectivity and high speed Internet access. Some States and local areas have embraced this transformative learning model which can be inexpensive and conveniently mobile, and have incorporated it into their training delivery options.

ETA launched the TBL Initiative within the workforce investment system in 2006 to encourage a national strategy for advancing the use of technology for training. The initiative seeks to increase the number of people trained in high growth jobs through the broadening of opportunities for skill and competency development through the use of TBL methods. Through the TBL Initiative and other investments, ETA has supported the use of TBL in demonstrations aimed to use technology to increase access to lifelong learning.

The promise of these TBL demonstrations has prompted ETA to move to systematically support the use of TBL nationwide. This SGA seeks to support models of TBL to stimulate new and innovative uses of technology for training the workforce in the skills demanded by their regional economies and high-growth/high-demand industries and occupations.

*2. Critical Elements of TBL Grants*

It is ETA's expectation that these TBL grants will contain at least the following critical elements: (A) A focus on expanding training opportunities to develop demand-driven skills and competencies using TBL that are sustainable and scalable; (B) strategic partnerships with recognized or emerging high-growth/high-demand industries, educational and training institutions, and the public workforce investment system; (C) robust provisions for user support in the TBL proposal framework for all potential clients including underserved populations, and all levels of computer and Internet technical proficiency; and (D) training leading to an industry or occupationally recognized credential, certificate, or qualification in a high-growth/high-demand field.

A. Expanding Training Opportunities Using TBL

TBL presents solutions to several challenges in expanding access to post-secondary and lifelong learning because of its inherent ability to overcome traditional obstacles to learning that include the distance from one's home or office to the training or educational facility, the variable nature of the time commitment required of users, the pace of learning offered, and the accessibility to specific resources that otherwise are not locally available.

The spread and proliferation of technology and TBL methods presents a wide universe of options available to address training and employment needs, including new and innovative uses of technology to enhance existing training programs. For example, overcoming time barriers for TBL users could entail training that is available on-demand on a flexible or entirely user-driven schedule. Bridging the distance from training providers to users could entail the delivery of content over the Internet, by converting current training courses to an online and/or TBL enhanced platform, by satellite connections, phone lines, computer-based programs, television and radio frequencies, among other methods.

The TBL grant awards are intended in part to identify promising approaches that can be scalable for wider deployment after the grant period. Successful demonstration programs are often rolled out on a regional or national basis, and proposals should outline how their program could be implemented on a wider scale should they be successful in meeting their goals. This requires grantees to keep careful records of program implementation, best practices, data collection, and to coordinate with evaluation efforts as appropriate.

B. Demand-Driven Strategic Partnerships

Successful development and application of TBL programs in a regional economy requires the collaboration of high-growth/high-demand industries and/or businesses, education and training providers, and the workforce investment system. These strategic partnerships should engage each partner in its area of strength. For example, industry representatives and employers can define workforce challenges facing the industry and identify the competencies and skills required for the industry's workforce. Education and training providers can assist in developing competency models and curricula and train new and incumbent workers. The workforce investment system can compile and analyze local labor market information, access human capital (e.g. youth, unemployed, underemployed, and dislocated workers), provide funding to support training for qualified individuals, and connect trained workers to good jobs.

Applicants must demonstrate the existence of a partnership that includes at least one entity from each of three categories: (1) The publicly funded workforce investment system, which may include State and local Workforce Investment Boards, State Workforce Agencies, and One-Stop Career Centers and their partners; (2) the education and training community, which includes community and technical colleges, four-year colleges and universities, and other training entities; and (3) representatives from industry in high-growth/high-demand fields.

These partnerships should exist within an economic region that may or may not fall within typical State, county, local workforce investment area, or municipal boundaries. Applications should detail the region in which the project will operate. In addition, grantees will be required to match 20 percent of the grant award with monetary or in-kind resources.

The Workforce Investment Act of 1998 (Pub. L. 105–220) as amended (WIA) emphasizes a workforce system driven by the needs of local employers. Educational institutions, Workforce Investment Boards, and One-Stop Career Centers play a vital role in this effort by understanding the workforce needs of these industries and providing training and other services to address those needs. Successful applications will outline in detail the skills and competencies demanded by employers, provide compelling evidence of their claims, and show the impact the project will have in the target industry and/or region.

C. Program Design, User Support, Outcomes

TBL approaches are frequently used to serve those individuals who are perceived to be proficient in computers and technology, such as younger workers or skilled professionals. However, projects such as the New Jersey Online Learning Demonstration,

which enabled low income women to access online learning, have shown that TBL can benefit a much wider population, and can improve and expand access to learning for individuals frequently left behind by technology initiatives. TBL grant projects should ensure that the targeted participants, those who need additional education and training, are able to access TBL opportunities. Grant applications that reach populations typically not served by technology initiatives are encouraged. ETA encourages applicants who are targeting disconnected populations to partner with networks of faith- and community-based organizations. Faith- and community-based organizations have valuable expertise in successful strategies for working with disconnected populations and can provide outreach and wrap around support services as needed. For applicants choosing to partner with faith- and community-based organizations please visit *http://www.dol.gov/cfbci/accesspoints.htm* for specific mechanisms and strategies for integrating these organizations into the proposal.

In addition, potential TBL users constitute a wide range of technology literacy levels. Successful applications will include provisions enabling participants with varying technical skill levels to participate in the proposed project. This may include computer and Internet literacy programs. However, such programs should not constitute the entirety of the proposed project, but should be used to enable as many participants as possible to benefit from the proposed project.

Once learners have developed basic computer and technology proficiency, projects funded under the TBL grants should also provide technical support to ensure participants are successful in using the TBL application or other technologies supported under the grant project. This support should be available to all learners served by the grant project. Technical support would assist learners in using relevant software, as well as assisting learners in diagnosing and fixing hardware problems that prevent them from being able to use the TBL supported by the grant. Support could be in the form of dedicated user support telephone numbers, periodic refresher courses, webinars or online learning modules, in-person consultation at a central site or a site convenient for the learner, periodic in-person gatherings, or other methods of support provision. Successful applications will outline methods and techniques for user support for the proposed training program.

D. Training Leading to Recognized Credentials

Achieving widely recognized industry credentials and qualifications are important to employment skills training. These qualifications are portable across companies and different parts of the country, and provide employment flexibility and mobility to the worker. In the event no currently recognized credential in the target industry or occupation exists, compelling arguments backed by sufficient evidence of competency towards meeting the needs of the target industry upon program completion will also be considered.

**Part II. Award Information**

*1. Award Amount*

ETA anticipates awarding approximately twenty (20) grants, with individual grants generally ranging in value from $100,000 up to $500,000. However, this does not preclude ETA from funding grants at either a lower or higher amount, or funding a smaller or larger number of projects, based on the type and the number of quality submissions. Applicants are encouraged to submit budgets for quality projects at whatever funding level is appropriate to their project.

*2. Period of Performance*

The period of grant performance will be up to 36 months from the date of execution of the grant documents. This performance period shall include all necessary implementation and start-up activities, participant follow-up for performance outcomes, and grant close-out activities. ETA may elect to exercise its option to award no-cost extensions to grants for an additional period, based on the success of the program and other relevant factors, if the grantee requests, and provides a significant justification for such an extension.

*3. Required Matching Resources*

ETA grant funds must not be the sole funding source for the activities to be carried out under the proposal. Grantees must match 20 percent of the grant amount with monetary or in-kind contributions. Matching must meet the definition delineated in 29 CFR Part 95.23 and 29 CFR Part 97.24. Applicants must fully describe the amount, commitment, nature, and quality of the matched resources. Please note that Federal resources may not be counted as match. To be allowable as part of match, a cost must be an allowable charge for Federal grant funds. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles as indicated in Part II. If the cost would not be allowable as a grant-funded charge, then it also cannot be counted toward matching funds. Matching funds must be expended during the grant period of performance. Please note that applicants are expected to fulfill the match amount specified on their SF–424 application and SF–424a budget form. Upon completion of the grant, if the match amount specified by the applicant is not met or if a portion of the matching funds are found to be an unallowable cost, the amount of DOL grant funds may be decreased on a dollar for dollar basis. This may result in the repayment of funds to DOL.

*4. Use of Funds/Allowable Activities*

TBL grants will be funded by H–1B fees as authorized under Sec. 414(c) of the American Competitiveness and Workforce Improvement Act of 1998 (Pub. L. 105–277, title IV) as amended by Public Law 108–447 (codified at 29 U.S.C. 2916a). These funds are focused on the development of the workforce and may be used to provide job training and related activities to workers to assist them in gaining the skills and competencies needed in industry sectors and occupations projected to experience significant growth or significant demand for workers. Whether the focus is on an industry sector or an occupational area, training investments using grant funds should focus on workforce education in high-skill occupations. Funds available under this Solicitation may only be used for projects that provide training in the occupations and industries for which employers use H–1B visas or those related activities necessary to support training in such occupations and industries.

Please see the report titled *Characteristics of Specialty Occupation Workers (H–1B): Fiscal Year 2005*, especially table 13B on page 21 of the report, from the following link for guidance on the list of eligible occupations and industries that have been identified as those for which employers use H–1B visas to employ foreign workers. *http://www.uscis.gov/files/nativedocuments/H1B_FY05_Characteristics.pdf.*

Activities funded under this Solicitation must be focused on developing skills and competencies related to the fields identified in the Attachment. Funds may also be used to enhance the provision of job training services and information as authorized in 29 U.S.C. 2916a(2)(B).

*5. Funding Restrictions*

Determinations of allowable costs will be made in accordance with the applicable Federal cost principles. Disallowed costs are those charges to a grant that the grantor agency or its representative determines not to be allowed in accordance with the applicable Federal cost principles or other conditions contained in the grant. Successful or unsuccessful applicants will not be entitled to reimbursement of pre-award costs.

*Limitations on Cost per Participant.* Since training costs may vary considerably for different occupations in different industries on the skills and competencies required, flexibility will be given on the cost per-participant. However, applications for funding will be reviewed to determine if the cost of the training is appropriate and will produce the outcomes identified. Applicants should demonstrate that the proposed cost per participant is aligned with existing price structures for similar training in the local area or other areas with similar characteristics. When calculating cost per participant, applicants must distinguish between non-training and training costs utilizing grant funds.

Indirect Costs. As specified in the Office of Management and Budget Circular Cost Principles, indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular cost objective. An indirect cost rate (ICR) is required when an organization operates under more than one grant or other activity whether Federally-assisted or not. Organizations must use the indirect cost rate supplied by the cognizant Federal agency. If an organization requires a new ICR or has a pending ICR, the Grant Officer will award a temporary billing rate for 90 days until a provisional rate can be issued. This rate is based on the fact that an organization has not established an ICR agreement. Within this 90 day period, the organization must submit an acceptable indirect cost proposal to their Federal cognizant agency to obtain a provisional ICR.

Administrative Costs. Under the TBL Initiative, an entity that receives a grant to carry out a project or program may not use more than 10 percent of the amount of the grant to pay administrative costs associated with the program or project. Administrative costs could be both direct and indirect costs and are defined at 20 CFR 667.220. Administrative costs do not need to be identified separately from program costs on the Standard Form 424A Budget Information Form. Administrative costs should be discussed in the budget narrative and tracked through the grantee's accounting system.

To claim any administrative costs that are also indirect costs, the applicant must obtain an indirect cost rate agreement from its Federal cognizant agency as specified above.

Use of Funds for Supportive Services. Use of grant funds for supportive services, such as transportation and childcare, including funds provided through stipends for such purposes, is not an allowable cost under this Solicitation for Grant Applications.

Salary and Bonus Limitations. None of the funds awarded under this grant shall be used by a recipient or sub-recipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II. See sections five through eight of the Training and Employment Guidance Letter number 5–06 for further clarification: *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2262*.

Legal Rules Pertaining to Inherently Religious Activities by Organizations that Receive Federal Financial Assistance. The government is generally prohibited from providing direct financial assistance for inherently religious activities (please see 29 CFR Part 2, Subpart D). These grants may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious activities except as provided in those regulations. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this program. Neutral, non-religious criteria that neither favors nor disfavors religion will be employed in the selection of grant recipients and must be employed by grantees in the selection of sub-recipients.

A faith-based organization receiving ETA funds retains its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs. For example, a faith-based organization may use space in its facilities to provide secular programs or services funded with Federal funds without removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization that receives Federal funds retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents in accordance with all program requirements, statutes, and other applicable requirements governing the conduct of ETA funded activities.

Faith-based and community organizations may also reference ETA Training and Employment Guidance Letter (TEGL) No. 01–05 (July 6, 2005), available at *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2088* and the ''Guidance to Faith-Based and Community Organizations on Partnering with the Federal Government'' at *http://www.whitehouse.gov/government/fbci/guidance/index.html.*

ETA Intellectual Property Rights. Applicants should note that grantees must agree to provide USDOL/ETA a paid-up, nonexclusive and irrevocable license to reproduce, publish, or otherwise use for Federal purposes all products developed or for which ownership was purchased under an award, including but not limited to curricula, training models, technical assistance products, and any related materials, and to authorize them to do so. Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise.

**Part III. Eligibility Information**

Eligible Applicants. This SGA intends to encourage new and continuing partnerships between: The publicly funded workforce investment system; representatives from business, industry, and economic development; and the continuum of education.

In order to be eligible for consideration under this solicitation, the applicant must be either:

- An accredited educational institution in partnership with a Workforce Investment Board. The applicant must have a letter of commitment from the Workforce Investment Board.
- A private non-profit, or private provider of workforce system services determined to be tax exempt under section 501(C) of the Internal Revenue Code, including registered apprenticeship sponsors, in partnership with a Workforce Investment Board. The applicant must have a letter of commitment from the Workforce Investment Board.
- A One-Stop Career Center as established under Section 121 of WIA, [29 U.S.C. 2841], in partnership with a state or local Workforce Investment Board. The eligible applicant for One-Stop Career Centers is the One-Stop Operator, as defined under Section 121(d) of WIA [29 U.S.C. 2841(d)], on

behalf of the One-Stop Career Center. The One-Stop applicant must have a letter of commitment from the state or local Workforce Investment Board, and demonstrate that the Workforce Investment Board, or its designated fiscal agent, will serve as the fiscal agent for the grant by clearly providing the legal name and the Employer Identification number of the fiscal agent. The Workforce Investment Board's support and involvement in the project should be detailed in the letter of commitment. Applications from One-Stop Career Centers without a letter of commitment from their Workforce Investment Board will be considered non-responsive and will not be reviewed.

- An employer or industry association in partnership with a Workforce Investment Board. The applicant must have a letter of commitment from the Workforce Investment Board.
- Private, for-profit organizations in partnership with a Workforce Investment Board. The applicant must have a letter of commitment from the Workforce Investment Board.

*Other Eligibility Requirements*

Veterans Priority. The Jobs for Veterans Act (Pub. L. 107–288) provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by the Department of Labor. In circumstances where a TBL Grant recipient must choose between two equally qualified candidates for training, one of whom is a veteran, the Jobs for Veterans Act requires that TBL grant recipients give the veteran priority of service by admitting him or her into the program. Please note that, to obtain priority of service, a veteran must meet the program's eligibility requirements. ETA Training and Employment Guidance Letter (TEGL) No. 5–03 (September 16, 2003) provides general guidance on the scope of the Job for Veterans Act and its effect on current employment and training programs. TEGL No. 5–03, along with additional guidance, is available at the ''Jobs for Veterans Priority of Service'' Web site: *http://www.doleta.gov/programs/vets*.

Participants Eligible To Receive TBL Training. Generally, the scope of potential trainees is very broad. Training may be targeted to a wide variety of populations, including unemployed individuals and incumbent workers. The identification of targeted and qualified trainees should be part of the larger project planning process by the required partnership and should relate to the workforce issue that is being addressed by the training.

**Part IV. Application and Submission Process**

*A. Address To Request Application Package*

This SGA contains all of the information and links to forms needed to apply for grant funding.

*B. Content and Form of Application Submission*

The proposal must consist of two (2) separate and distinct parts, Part I—The Cost Proposal and Part II—The Technical Proposal. Applications that fail to adhere to the instructions in this section will be considered non-responsive and may not be given further consideration. Applicants who wish to apply do not need to submit a Letter of Intent. The completed application package is all that is required.

Part I—The Cost Proposal must include the following three items:

- The Standard Form (SF) 424, ''Application for Federal Assistance'' (available at *http://www.doleta.gov/sga/forms.cfm*). The SF 424 must clearly identify the applicant and be signed by an individual with authority to enter into a grant agreement. Upon confirmation of an award, the individual signing the SF 424 on behalf of the applicant will be considered the Authorized Representative of the applicant.
- All applicants for Federal grant and funding opportunities are required to have a Data Universal Numbering System (DUNS) number provided by Dun and Bradstreet. See OMB Notice of Final Policy Issuance, 68 FR 38402 (June 27, 2003). Applicants must supply their DUNS number on the SF 424. The DUNS number is a nine-digit identification number that uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access this Web site, *http://www.dunandbradstreet.com*, or call 1–866–705–5711.
- The SF 424A Budget Information Form (available at *http://www.doleta.gov/sga/forms.cfm*). In preparing the Budget Information Form, the applicant must provide a concise narrative explanation to support the request. The budget narrative should explain the administrative costs and how they support the project goals. All applicants should indicate training costs-per-participant by dividing the total amount of the budget designated for training by the number of participants trained. Only an applicant's match amount should be listed on the SF 424 (Block 18) and SF 424A Budget Information Form (Section A, Column F and Section C). Please note that applicants that fail to provide an SF 424, SF 424A and a budget narrative will be removed from consideration prior to the technical review process. The amount of Federal funding requested for the entire period of performance should be shown together on the SF 424 and SF 424A Budget Information Form. Applicants are also encouraged, but not required, to submit the OMB Survey No. 1890–0014: Survey on Ensuring Equal Opportunity for Applicants, which can be found at: *http://www.doleta.gov/sga/forms.cfm*.

Part II—The Technical Proposal of the application demonstrates the applicant's capabilities to fulfill the intention of the TBL Initiative. The Technical Proposal is limited to twenty (20) double-spaced, single-sided, 8.5 inch x 11 inch pages with twelve point text font and one-inch margins. The first page of Part II—The Technical Proposal must consist entirely of an executive summary not to exceed one page. Applicants should number the Technical Proposal beginning with page number one. Any pages over the 20-page limit will not be reviewed. In addition, while the applicant may provide resumes, general letters of support and other related material, any attachments may not exceed an additional 10 pages. The required letter(s) of concurrence and/or documentation of partnership must be submitted and will not count against the first 20 allowable pages, but will count against the 10-page limitation on attachments. Please note, letters of commitment should be sent with or attached to the application. Additionally, the applicant must reference grant partners by organizational name in the text of the Technical Proposal. No cost data or reference to prices should be included in the Technical Proposal. Applications may be submitted electronically on *http://www.grants.gov or* in hard-copy via U.S. mail, professional overnight delivery service, or hand delivery. These processes are described in further detail in Part IV.C. Applicants submitting proposals in hard-copy must submit an original signed application (including the SF 424) and one (1) ''copy-ready'' version free of bindings, staples or protruding tabs to ease in the reproduction of the proposal by USDOL/ETA.

*C. Submission Date, Times and Mailing Address*

The closing date for receipt of applications under this announcement is August 19, 2008. Applications must be received at the address below no later than 5 p.m. (Eastern Time). Applications sent by e-mail, telegram, or facsimile will not be accepted. Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing and delivery requirements set forth in this notice will be granted.

ETA will post Frequently Asked Questions (FAQs) about this SGA on our Web site, *http://www.doleta.gov/grants*. The FAQs as well as the dates and access information for the Prospective Applicant Conferences will be posted on ETA's Web site at: *http://www.doleta.gov/grants*. Please check these pages periodically during the application period of the solicitation for updates.

Please submit one (1) blue-ink signed, typewritten original of the application and two (2) signed photocopies in one package to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Mamie Williams, Reference SGA/DFA PY 08–04, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210. Information about applying online through *http://www.grants.gov* can be found in section IV.C of this document. Applicants are advised that mail delivery in the Washington area is delayed due to mail decontamination procedures. Hand delivered proposals will be received at the above address.

Applicants may apply online through grants.gov (*http://www.grants.gov*). It is strongly recommended that applicants applying online for the first time via grants.gov immediately initiate and complete the ''Get Registered'' registration steps at *http://www.grants.gov/applicants/get_registered.jsp.* These steps may take multiple days or weeks to complete, and this time should be factored into plans for electronic application submission in order to avoid unexpected delays that could result in the rejection of an application. It is highly recommended that online submissions be completed at least two (2) working days prior to the date specified for the receipt of applications to ensure that the applicant still has the option to submit by overnight delivery service in the event of any electronic submission problems. If submitting electronically through grants.gov, the attachments of the application must be saved as either .doc, .xls or .pdf files.

*Late Applications:* Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made, was properly addressed, and: (a) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., an application required to be received by the 20th of the month must be postmarked by the 15th of that month) or (b) was sent by professional overnight delivery service or submitted on grants.gov to the addressee not later than one working day prior to the date specified for receipt of applications. It is highly recommended that online submissions be completed two (2) working days prior to the date specified for receipt of applications to ensure that the applicant still has the option to submit by professional overnight delivery service in the event of any electronic submission problems. Applicants take a significant risk by waiting until the last day to submit by grants.gov. ''Postmarked'' means a printed, stamped or otherwise placed impression that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the package. Failure to adhere to the above instructions will be a basis for a determination of non-responsiveness. Evidence of timely submission by a professional overnight delivery service must be demonstrated by equally reliable evidence created by the delivery service provider indicating the time and place of receipt.

*D. Intergovernmental Review*

This funding opportunity is not subject to Executive Order (EO) 12372, ''Intergovernmental Review of Federal Programs.''

*E. Withdrawal of Applications*

Applications may be withdrawn by written notice at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

**Part V. Applications Review Process**

This section identifies and describes the criteria that will be used to evaluate proposals for this grant program. These criteria and point values are listed in the table below.

| | |
|---|---|
| Expanding Training Opportunities Using TBL | 30 |
| Demand-Driven Strategic Partnerships | 20 |
| Program Design, User Support, and Outcomes | 40 |
| Training Leading to an Industry Recognized Credential | 10 |

*Expanding Training Opportunities Using TBL (30 Points)*

As described below, the applicant must show in detail how their proposed usage of TBL will expand and/or improve upon training opportunities for their targeted industry or occupation and population.

*Expanding Training Opportunities Using TBL (10 points)*—Applicants must clearly show how the use of TBL in their proposal will expand the employment and training options available to consumers in their targeted occupation and/or industry. Applications proposing expansion of existing TBL employment and training programs must clearly show how many more individuals will be served than are currently being served by the program. All applications must clearly show the number of additional individuals the proposal would allow to be trained.

*Overcoming Traditional Workforce Training Barriers (10 points)*—The applicant must describe how their proposed use of TBL would overcome barriers of distance and time for the user and capacity for the training providers and/or users as described in Part I of this SGA. Successful applications will show the necessity of using TBL methods to increase the numbers of individuals trained.

*Sustainability and Scalability (7 points)*—ETA places a high premium on demonstrations that can be sustainable after the grant period has ended and that are scalable to larger roll out across the nation. Proposals should outline plans for sustainability of the program post-grant in regard to the program and partnerships. Also, applications should outline the feasibility of expanding a successful program in terms of geographic reach, industry sites served, numbers of individuals trained, and of replicating the entire program.

*Need for Federal Investment (3 points)*—Applicants must clearly outline the need for intervention in the targeted industry or occupational field, as well as the necessity of the Federal

investment. Applications must describe in detail the current challenges the proposal seeks to overcome with TBL methods, and must demonstrate how the proposed project will increase opportunities for training in the applicant's target population.

*Demand-Driven Strategic Partnerships (20 points)*

As described below, applicants must show evidence that a strong partnership exists among educational institutions, local high-growth/high-demand industries, and the workforce investment system. Applicants must highlight and discuss the targeted high-growth/high-demand occupation and/or industry and clearly show the need for the proposal in meeting the demands of each as appropriate. Applicants must provide letters of commitment from each partner detailing their involvement in the proposal.

*Strength of Partnerships (8 points)*—The strength of the strategic partnership is critical to the successful execution of the proposal and the post-grant viability of the program. Applicants must clearly explain how the strategic partners are engaged to the fullest extent possible and articulate how each partner's area of expertise will be utilized in the project. If disconnected or disadvantaged populations are targeted in the grant, the applicant must show how it will foster access to training through networks of faith- and community-based organizations. Letters of commitment from each partner detailing their participation in each stage of the project are required. The applicant must discuss how the partners will interact at each stage of the project and the ability of the lead organization to successfully manage the partnership and project. The applicant must designate one organization from the workforce investment or education system from among the application's partners to act as grant recipient.

*High-growth/High-demand (7 points)*—Industry partners should be chosen from high-growth/high-demand industries in the targeted regional economy. Successful applications will provide detailed evidence of their industry partner's position as a high-demand/high-growth industry field or as an employer of the targeted high-growth/high-demand occupation. Applications must also clearly and convincingly outline the need for TBL training resources to be used to meet employment and training demand.

*Organizational Capacity (5 points)*—Applications must detail each partner's experience, expertise, and ability to fulfill their part of the proposal and document any history of past collaborations. In addition, expertise in TBL and the target industry and/or occupation should be well documented.

*Program Design, User Support, and Outcomes (40 points)*

In evaluating the quality of the program design and management plan for each proposal, ETA will consider the following elements.

*Program Design (20 points)*—Applicants must clearly outline the training or learning program to be developed, expanded, and/or created, and include timelines for implementation and benchmark evaluations as appropriate. If the content already exists, the applicant shall clearly explain how the content will be expanded through the use of TBL to meet the occupational skill needs of industry in the targeted fields. Applicants will also be scored on the extent to which the management plan appears likely to achieve the objectives of the project in meeting the goals of the TBL grant. Applicants must estimate how many more individuals will be able to access the training program than currently enrolled.

*Outcomes (10 points)*—Applications must project the increased number of individuals that will be able to receive training under the proposal. For existing programs, applications must show the numbers of individuals trained in the previous training cycle. Estimations of projected increases in individuals trained should be compelling and fully formed, and include consideration from all appropriate factors.

*User Support (5 points)*—Applications must clearly outline their plans to provide user support to program participants including bridging the digital divide and all manners of proposed technical support for users, including, but not limited to user support examples outlined in Part I of this SGA.

*Evaluation and Data Collection (5 points)*—Measuring the performance of pilots and demonstrations is a high priority for ETA. Post-grant evaluations require collection of a robust set of variables. While grantees will not be required to perform an evaluation themselves, they will be required to participate in an evaluation of the demonstration. Therefore, applicants must demonstrate a capacity to gather relevant statistical, demographic, and other data as appropriate from project participants and program performance. Grantees must participate in and cooperate with any planned evaluation, which may extend beyond the grant period of performance.

Data collection may include, but is not limited to:

- Total enrollment in training program.
- Increase in enrollment attributed to grant (number of additional students).
- Number of participants that entered employment.
- Number of participants that entered employment in industry related to training.
- Participant's employment retention after six months and advancement.
- Participant's average earnings in the two quarters after program exit.
- Participant's receiving promotions and/or wage gains.
- Participant's receiving industry recognized credentials or educational certifications.

*Training Leading to an Industry Recognized Credential (10 points)*

Applicants must seek to train individuals towards attainment of an industry or occupationally recognized certificate or credential. Applications must clearly state the specific industry or occupationally recognized credential that the TBL training will lead to and provide a brief discussion of the credential. Foundational training can be a component of a proposal, but the majority of the funds should be directed towards industry-specific training. In the absence of a defined and recognized credential for the targeted industry or occupation, compelling evidence of occupational skill and/or competency attainment through program completion will be considered. In every instance possible, industry-specific training should conform to published competency models. A link to a published competency model is included below. *http://www.careeronestop.org/CompetencyModel.*

*Review and Selection Process*

Applications will be accepted after the publication of this announcement until the closing date. A technical review panel will make a careful evaluation of applications against the criteria set forth in Part V of this Solicitation. These criteria are based on the policy goals, priorities, and emphases set forth in this SGA. Up to 100 points may be awarded to an application, based on the required information described in Part V of this Solicitation. The ranked scores will serve as the primary basis for selection of applications for funding, in conjunction with other factors such as: Urban, rural, and geographic balance; industry balance; the availability of funds; and which proposals are most

advantageous to the Government. The panel results are advisory in nature and not binding on the Grant Officer, who may consider any information that comes to his attention. ETA may elect to award the grant(s) with or without prior discussions with the applicants. The Government will consider applications rated by the evaluation panels with a score of 80 or above to be eligible for a grant award. Applicants that score less than 80 will not be eligible for a grant award. Should a grant be awarded without discussions, the award will be based on the applicant's signature on the SF 424, which constitutes a binding offer.

**Part VI. Award Administration Information**

*A. Award Notices*

All award notifications will be posted on the ETA Web site at *http://www.doleta.gov.* Applicants selected for award will be contacted directly before the grant's execution. Applicants not selected for award will be notified by mail as soon as possible.

**Note:** Selection of an organization as a grantee does not constitute approval of the grant application as submitted. Before the actual grant is awarded, ETA may enter into negotiations about such items as program components, staffing, and administrative systems in place to support grant implementation. If negotiations do not result in a mutually acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application.

*B. Administrative and National Policy Requirements*

1. Administrative Program Requirements

All grantees will be subject to all applicable Federal laws, regulations, and the applicable OMB Circulars. The grant(s) awarded under this SGA will be subject to the following administrative standards and provisions, if applicable:

a. Workforce Investment Act—20 CFR Part 667 (General Fiscal and Administrative Rules).

b. Non-Profit Organizations—OMB Circulars A–122 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).

c. Educational Institutions—OMB Circulars A–21 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).

d. State and Local Governments—OMB Circulars A–87 (Cost Principles) and 29 CFR Part 97 (Administrative Requirements).

e. Profit Making Commercial Firms—FAR—48 CFR Part 31 (Cost Principles), and 29 CFR Part 95 (Administrative Requirements).

f. All entities must comply with 29 CFR Parts 93 and 98, and, where applicable, 29 CFR Parts 96 and 99.

g. The following administrative standards and provisions may also be applicable:

i. 29 CFR Part 2, Subpart D—Equal Treatment in DePartment of Labor Programs for Religious Organizations, Protection of Religious Liberty of DePartment of Labor Social Service Providers and Beneficiaries;

ii. 29 CFR Part 30—Equal Employment Opportunity in Apprenticeship and Training;

iii. 29 CFR Part 31—Nondiscrimination in Federally Assisted Programs of the DePartment of Labor—Effectuation of Title VI of the Civil Rights Act of 1964;

iv. 29 CFR Part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance;

v. 29 CFR Part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the DePartment of Labor;

vi. 29 CFR Part 35—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the DePartment of Labor;

vii. 29 CFR Part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance;

viii. 29 CFR Part 37—Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998. In accordance with Section 18 of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65) (2 U.S.C. 1611) non-profit entities incorporated under Internal Revenue Service Code section 501(c)(4) that engage in lobbying activities are not eligible to receive Federal funds and grants.

**Note:** Except as specifically provided in this Notice, ETA's acceptance of a proposal and an award of Federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, OMB Circulars require that an entity's procurement procedures must ensure that all procurement transactions are conducted, as much as practical, to provide open and free competition. If a proposal identifies a specific entity to provide services, ETA's award does not provide the justification or basis to sole source the procurement, i.e., avoid competition, unless the activity is regarded as the primary work of an official partner to the application.

*C. Special Program Requirements*

ETA requires that the program or project participate in an evaluation of overall performance. To measure the impact of the TBL demonstration grant program, ETA may arrange for or conduct an independent evaluation of the outcomes and benefits of the projects. At minimum, grantees will be required to track performance using the common performance measures for any training component of their program. Grantees must agree to make records on participants, employers and funding available, and to provide access to program operating personnel and participants, as specified by the evaluator(s) under the direction of ETA, including after the expiration date of the grant. Please see Evaluation and Data Collection under *Part V. Applications Review Process,* Program Design, User Support, and Outcomes for more details. In addition, once the grants are awarded, the evaluation team will provide specific information on the scope of the evaluation.

*D. Reporting*

As a condition of participation in the TBL demonstration grant program, successful applicants will be required to submit periodic reports such as the Quarterly Financial Reports, Progress Reports and Final Reports as follows:

*Quarterly Financial Reports.* A Quarterly Financial Status Report (ETA 9130)/OMB Approval No. 1205–0461 is required until all funds have been expended and/or the grant period has expired. Quarterly financial reports are due 45 days after the end of each calendar year quarter. Grantees must use ETA's Online Electronic Reporting System.

*Quarterly Progress Reports.* The grantee must submit a quarterly progress report, Performance Progress Report, SF-PPR/OMB Approval Number: 0970–0443, to the designated Federal Project Officer within 45 days after the end of each calendar year quarter. Two copies are to be submitted providing a detailed account of activities undertaken during that quarter. ETA may require additional data elements to be collected and reported on either a regular basis or special request basis. Grantees must agree to meet ETA's reporting requirements. The quarterly progress report must be in narrative form and must include:

In-depth information on accomplishments including project success stories, upcoming grant activities, promising approaches and processes, and progress toward performance outcomes, among others.

Also, reports should include updates on product, curricula, training development, challenges, barriers, or concerns regarding project progress. Reports should also include lessons learned in the areas of project administration and management, project implementation, partnership relationships, and other related information. ETA will provide grantees with guidance and tools to help develop the quarterly reports once the grants are awarded.

*Final Report.* A draft final report must be submitted no later than 60 days prior to the expiration date of the grant. This report must summarize project activities, employment outcomes, and related results of the training project, and should thoroughly document capacity building and training approaches. The final report should also include copies of all deliverables, *e.g.* curricula and competency models. After responding to ETA questions and comments on the draft report, three copies of the final report must be submitted no later than the grant expiration date. Grantees must agree to use a designated format specified by ETA for preparing the final report.

**Part VII. DOL Agency Contact Information**

For further information regarding this SGA, please contact Mamie Williams, Grants Management Specialist, (202) 693–3341. (Please note this is not a toll-free number.) Applicants should fax all technical questions to (202) 693–2879 and must specifically address the fax to the attention of Mamie Williams and should include SGA/DFA PY 08–04, a contact name, fax and phone number, and e-mail address. This announcement is being made available on the ETA Web site at *http://www.doleta.gov/sga/sga.cfm*, at *http://www.grants.gov,* as well as in the **Federal Register**.

**Part VIII. Additional Resources of Interest to Applicants**

*Resources for the Applicant*

ETA maintains a number of Web-based resources that may be of assistance to applicants.

- The Workforce3One Web site at *http://www.workforce3one.org* is a valuable resource for information about demand driven projects of the workforce investment system, educators, employers, and economic development representatives.
- America's Service Locator at *http://www.servicelocator.org* provides a directory of the nation's One-Stop Career Centers.
- Career Voyages at *http://www.careervoyages.com* is a Web site targeted at youth, parents, counselors, and career changers that provides information about career opportunities in high-growth/high-demand industries.
- Applicants are encouraged to review ''Help with Solicitation for Grant Applications'' at *http://www.dol.gov/cfbci/sgabrochure.htm.*
- For a basic understanding of the grants process and basic responsibilities of receiving Federal grant support, please see ''Guidance for Faith-Based and Community Organizations on Partnering with the Federal Government'' available at *http://www.whitehouse.gov/government/fbci/guidance/index.html.*

**Other Information**

OMB Information Collection No. 1205–0458.

Expires: September 30, 2009.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, the OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503. Please do not return the completed application to the OMB. Send it to the sponsoring agency as specified in this solicitation. This information is being collected for the purpose of awarding a grant. The information collected through this ''Solicitation for Grant Applications'' will be used by the Department of Labor to ensure that grants are awarded to the applicants best suited to perform the functions of the grant. Submission of this information is required in order for the applicant to be considered for award of this grant. Unless otherwise specifically noted in this announcement, information submitted in the respondent's application is not considered to be confidential.

Signed at Washington, DC, this 12th day of June, 2008.

**James W. Stockton,**

*Grant Officer.*

[FR Doc. E8–13967 Filed 6–19–08; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *June 2 through June 6, 2008*.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under

the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

*TA–W–63,307; Condor Products Co., Inc., A Wholly Subsidiary of Coolgas, Owosso, MI: April 30, 2007.*

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

*TA–W–63,249; Starkey Laboratories, Inc., Starkey Northwest Division, Portland, OR: April 23, 2007.*

*TA–W–63,105; The Bradenton Herald, AD Production Department, Bradenton, FL: March 25, 2007.*

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

*None.*

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

*None.*

**Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*TA–W–63,267; Shane Hunter, Inc., San Francisco, CA: April 18, 2007.*

*TA–W–63,378; SL Montevideo Technology, Inc., Montevideo, MN: May 9, 2007.*

*TA–W–63,218; Weyerhaeuser Company, Ilevel Veneer Technologies, Junction City, OR: April 9, 2007.*

*TA–W–63,256; Shuqualak Lumber Company, Inc., Sawmill and Planermill Division, Shuqualak, MS: April 25, 2007.*

*TA–W–63,376; Oxford Furniture, Inc., Ecru, MS: May 6, 2007.*

*TA–W–63,389; The Apparel Group/ Chaseline, d/b/a Chaseline, Reidsville, NC: May 12, 2007.*

*TA–W–63,445; Citation Grand Rapids, LLC, Grand Rapids, MI: May 28, 2007.*

*TA–W–63,344; General Motors Corporation, Moraine Assembly Plant, Vehicle Manufacturing Division, Moraine, OH: June 17, 2008.*

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*TA–W–63,310; Rockwell Automation, Eden Prairie, MN: May 2, 2007.*

*TA–W–63,393; Fawn Plastics, Middlesex, NC: May 14, 2007.*

*TA–W–63,403; Lear Corporation, Tampa, FL: May 16, 2007.*

*TA–W–63,427; Lumberg Automation USA, Midlothian, VA: May 13, 2007.*

*TA–W–63,449; Lear Corporation, Seating Systems Division, Troy, MI: March 8, 2008.*

*TA–W–63,127; Edscha Spartanburg, Greer, SC: July 23, 2007.*

*TA–W–63,253; IntraPac, Inc., Harrisonburg, VA: April 25, 2007.*

*TA–W–63,274; Schindler Elevator Corporation, Sidney, OH: April 28, 2007.*

*TA–W–63,334; Stearns, Inc., aka Coleman Company, Sauk Rapids, MN: November 17, 2007.*

*TA–W–63,334A; Stearns, Inc., aka Coleman Company, Grey Eagle, MN: November 17, 2007.*

*TA–W–63,358; Rika Denshi America, Inc., Attleboro, MA: May 8, 2007.*

*TA–W–63,363; Times Fiber Communications, Inc., Chatham, VA: May 9, 2007.*

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*TA–W–63,250; Berkline/Benchcraft, LLC, Woodcraft—Woodworking Plant, Ripley, MS: April 22, 2007.*

*TA–W–63,311; McKechnie Vehicle Components, Newberry, SC: May 2, 2007.*

*TA–W–63,318; Raytor Compounds, Florence, MA: May 2, 2007.*

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*None.*

**Negative Determinations for Alternative Trade Adjustment Assistance**

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

*TA–W–63,307; Condor Products Co., Inc., A Wholly Subsidiary of Coolgas, Owosso, MI.*

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

*TA–W–63,249; Starkey Laboratories, Inc., Starkey Northwest Division, Portland, OR.*

*TA–W–63,105; The Bradenton Herald, AD Production Department, Bradenton, FL.*

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

*None.*

**Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

*TA–W–63,212; Tweddle Litho Company, dba Tweddle Group, Clinton Township, MI.*

*TA–W–63,279; Geiger Bros., Lewiston, NC.*

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

*TA–W–63,150; Enercon, Gray, OR.*

*TA–W–63,150A; Enercon, Auburn, MS.*

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

*TA–W–63,348; BASF Chemical Corporation, Aberdeen, SC.*

*TA–W–63,180; Atlas Alchem Plastic, Inc., dba Spartech Packaging Technologies, Mankato, CA.*

*TA–W–63,268; Key Plastics, LLC, Toolroom Department, Felton, MS.*

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*TA–W–63,239; The Hertz Technology Center, A Subsidiary of The Hertz Corporation, Oklahoma City, OH.*

*TA–W–63,324; Americall Group, Inc., Hobart, MI.*

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

*None.*

I hereby certify that the aforementioned determinations were issued during the period of *June 2 through June 6, 2008.* Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 13, 2008.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–13973 Filed 6–19–08; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 30, 2008.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 30, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 11th day of June 2008.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

APPENDIX

[TAA petitions instituted between 6/2/08 and 6/6/08]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 63454 | GM Powertrain (Wkrs) | Bedford, IN | 06/02/08 | 05/22/08 |
| 63455 | HSBC Card Services (State) | Salinas, CA | 06/02/08 | 05/30/08 |
| 63456 | Mahle Engine Components (UAW) | Muskegon, MI | 06/02/08 | 05/29/08 |
| 63457 | MTD Southwest, Inc. (Comp) | Tempe, AZ | 06/02/08 | 05/30/08 |

APPENDIX—Continued

[TAA petitions instituted between 6/2/08 and 6/6/08]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 63458 | Excello Engineered Systems (Comp) | Macedonia, OH | 06/02/08 | 05/30/08 |
| 63459 | Chaco, Inc. (Comp) | Paonia, CO | 06/02/08 | 05/31/08 |
| 63460 | AS America (USWA) | Salem, OH | 06/02/08 | 05/30/08 |
| 63461 | Logistic Services, Inc. (LSI) (UAW) | Janesville, WI | 06/02/08 | 05/30/08 |
| 63462 | Carthage Fabrics, Inc. (Wkrs) | Carthage, NC | 06/03/08 | 05/28/08 |
| 63463 | Sun Chemical Company (State) | North Haven, CT | 06/03/08 | 06/02/08 |
| 63464 | Dura Automotive Systems (Comp) | Galdwin, MI | 06/03/08 | 05/30/08 |
| 63465 | Sara Campbell, Ltd (Comp) | Boston, MA | 06/03/08 | 06/02/08 |
| 63466 | Citation Corporation (Comp) | Butler, IN | 06/03/08 | 06/02/08 |
| 63467 | JM Eagle (State) | Hastings, NE | 06/03/08 | 06/02/08 |
| 63468 | Circor Instrumentation Technologies (State) | Spartanburg, SC | 06/03/08 | 06/02/08 |
| 63469 | Ladeer Metal Stamping (Wkrs) | Ladeer, MI | 06/03/08 | 06/01/08 |
| 63470 | Intelicoat Technologies (Wkrs) | Portland, OR | 06/03/08 | 06/02/08 |
| 63471 | Appleton Coate (Wkrs) | Combined Locks, WI | 06/04/08 | 06/03/08 |
| 63472 | Sandberg and Sikorski (Wkrs) | New York, NY | 06/04/08 | 05/29/08 |
| 63473 | Whyco Finishing Technologies, LLC (State) | Thomaston, CT | 06/04/08 | 06/03/08 |
| 63474 | Anderson Independent Mail (Wkrs) | Anderson, SC | 06/04/08 | 05/23/08 |
| 63475 | Biosense Webster (Wkrs) | Irwinday, CA | 06/04/08 | 06/03/08 |
| 63476 | Indalex, Inc. (Union) | Modesto, CA | 06/04/08 | 06/03/08 |
| 63477 | Kwikset Corporation (Comp) | Denison, TX | 06/04/08 | 06/02/08 |
| 63478 | Aleris Rolled Products (Rep) | Bedford, OH | 06/04/08 | 06/02/08 |
| 63479 | S. U.S. Cast Products, Inc. (Wkrs) | Logansport, IN | 06/04/08 | 06/02/08 |
| 63480 | Mitsubishi Kagaku Imaging Corporation (Comp) | Chesapeake, VA | 06/04/08 | 05/20/08 |
| 63481 | Compucom Sytems, Inc.—Help Desk (Comp) | Parsippany, NJ | 06/05/08 | 05/29/08 |
| 63482 | Northridge Mills (State) | San Fernando, CA | 06/05/08 | 05/22/08 |
| 63483 | Southern Industrial Fabrics (Comp) | Rossville, GA | 06/05/08 | 05/27/08 |
| 63484 | Paul Winston Eurostar, LLC (Comp) | New York, NY | 06/05/08 | 05/23/08 |
| 63485 | Trans-Ocean Products, Inc. (Comp) | Salem, OR | 06/05/08 | 05/29/08 |
| 63486 | Grapevine Staffing, LLC (State) | Creston, IA | 06/05/08 | 06/03/08 |
| 63487 | Occidental Chemical Corporation (Comp) | Muscle Shoals, AL | 06/05/08 | 05/30/08 |
| 63488 | Schweitzer-Mauduit International, Inc. (Comp) | Lee, MA | 06/05/08 | 06/02/08 |
| 63489 | Weastec, Inc. (Wkrs) | Seaman, OH | 06/05/08 | 06/04/08 |
| 63490 | Tenneco (Union) | Milan, OH | 06/05/08 | 06/04/08 |
| 63491 | Sensus Metering (Wkrs) | Uniontown, PA | 06/06/08 | 06/05/08 |
| 63492 | Beverage Air (State) | Spartanburg, SC | 06/06/08 | 06/06/08 |
| 63493 | Evergy, Inc. (Comp) | Pawtucket, RI | 06/06/08 | 06/05/08 |
| 63494 | Master Industries, Inc. (Comp) | Ansonia, OH | 06/06/08 | 06/05/08 |
| 63495 | Nova Knits (Wkrs) | San Francisco, CA | 06/06/08 | 05/23/08 |
| 63496 | A. B. Boyd Corporation (Union) | Chino, CA | 06/06/08 | 06/05/08 |
| 63497 | Decoro USA, Ltd (Comp) | High Point, NC | 06/06/08 | 05/26/08 |
| 63498 | Westland Controls (State) | Westland, MI | 06/06/08 | 06/02/08 |

[FR Doc. E8–13972 Filed 6–19–08; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–63,193]**

### JP Morgan Chase & Co., JP Morgan Asset Management Fiduciary Administration—Court Accounting, Troy, MI; Notice of Negative Determination Regarding Application for Reconsideration

By application dated June 6, 2008, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on May 13, 2008 and published in the **Federal Register** on May 29, 2008 (73 FR 30978).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The negative TAA determination issued by the Department for workers of JP Morgan Chase & Co., JP Morgan Asset Management, Fiduciary Administration—Court Accounting, Troy, Michigan was based on the finding that the worker group does not produce an article within the meaning of Section 222 of the Trade Act of 1974.

The petitioner states that employment at the subject firm was negatively impacted by a shift of job functions to India. The petitioner also states that regardless of whether the workers of the subject firm produce a product or provide services, they should be certified eligible for Trade Adjustment Assistance.

The investigation revealed that the workers of JP Morgan Chase & Co., JP Morgan Asset Management, Fiduciary Administration—Court Accounting, Troy, Michigan are engaged in preparing trust and account transaction histories, and asset inventory lists for various county courts and/or other clients. These functions, as described above, are

not considered production of an article within the meaning of Section 222 of the Trade Act of 1974.

The allegation of a shift to another country might be relevant if it was determined that workers of the subject firm produced an article. Since the investigation determined that workers of JP Morgan Chase & Co., JP Morgan Asset Management, Fiduciary Administration—Court Accounting, Troy, Michigan do not produce an article, there cannot be imports nor a shift in production of an ''article'' abroad within the meaning of the Trade Act of 1974 in this instance.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 9th day of June 2008.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–13977 Filed 6–19–08; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–63,486]**

### Grapevine Staffing, LLC, Workers On-Site at O'Bryan Brothers Incorporated, Leon, IA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 5, 2008, in response to a petition filed by a State agency representative on behalf of workers of Grapevine Staffing, LLC, working on-site at O'Bryan Brothers Incorporated, Leon, Iowa.

The petitioning worker group is covered by a certification of eligibility to apply for worker adjustment assistance and alternative trade adjustment assistance under amended petition number TA–W–61,265, which does not expire until May 16, 2009.

Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 13th day of June 2008.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–13971 Filed 6–19–08; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–63,417]**

### Greene Plastics Corporation, Hope Valley, RI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 21, 2008 in response to a petition filed by a company official on behalf of workers of Greene Plastics Corporation, Hope Valley, Rhode Island.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 9th day of June 2008.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–13979 Filed 6–19–08; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–63,463**

### Sun Chemical Company, North Haven, CT; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 3, 2008, in response to a worker petition filed by a state workforce official on behalf of workers of Sun Chemical Company employed on-site at the North Haven, Connecticut location of Quebecor World Northeast Graphics, Inc.

The petitioning group of workers is covered by an active certification, (TA–W–63,301) which expires on May 16, 2010. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 11th day of June 2008.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–13980 Filed 6–19–08; 8:45 am]

**BILLING CODE 4510–FN–P**

## NUCLEAR REGULATORY COMMISSION

### Application for a License To Export Major Components for Nuclear Reactors

Pursuant to 10 CFR 110.70 (b)(1) ''Public Notice of Receipt of an Application,'' please take notice that the Nuclear Regulatory Commission (NRC) has received the following request for an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* To ensure timely electronic filing, at least five days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81 should be submitted within thirty days after publication of this

notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications.

In its review of applications for licenses and license amendments involving exports of major components of a utilization facility as defined in 10 CFR Part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or facilities to be exported.

The information concerning this license application follows:

NRC APPLICATION FOR LICENSE TO EXPORT MAJOR COMPONENTS OF A NUCLEAR UTILIZATION FACILITY

| Name of applicant, date of application, date received, application No., docket No. | Total quantity/ description of major components | End use | Country of destination |
|---|---|---|---|
| Curtiss-Wright Electro-Mechanical Corporation, May 14, 2008, May 15, 2008, XR172, 11005752. | As specified in 10 CFR Part 110, Appendix A Items (4) and (9), one (1) complete primary reactor coolant pump (RCP) or major sub-assemblies thereof, and various raw materials and parts/components to be processed into finished parts, components, sub-assemblies and assemblies in the People's Republic of China for return to applicant and incorporation into primary RCPs. Approximate Dollar Value: Proprietary. | To support construction of four (4) Westinghouse AP–1000 pressurized water reactors (PWRs) authorized for export by NRC license XR169/01 to Sanmen and Haiyang nuclear power plants. Applicant seeks to add one new ultimate consignee (testing facility for complete AP–1000 RCP) and four (4) new intermediate consignees (processing facilities to finish RCP parts) to the consignees listed on XR169/01. | People's Republic of China. |

For the U.S. Nuclear Regulatory Commission.

Dated this 11th day of June 2008 at Rockville, Maryland.

**Margaret M. Doane,**

*Director, Office of International Programs.*

[FR Doc. E8–14002 Filed 6–19–08; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–352 and 50–353]**

### Limerick Generating Station, Units 1 and 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–39 and NPF–85 issued to Exelon Generation Company, LLC (the licensee) for operation of Limerick Generating Station (LGS), Unit Nos. 1 and 2, located in Montgomery County, Pennsylvania.

The proposed amendment would increase the required minimum volume of fuel oil in the emergency diesel generator (EDG) day tanks from 200 gallons to 250 gallons, enough for 1 hour of continuous operation of the associated EDG at rated load. This change is necessitated by a revision to the LGS design analysis of EDG fuel consumption that accounts for parameters not considered in the original analysis, including the use of ultra-low sulphur diesel fuel oil.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change involves increasing the minimum volume of fuel oil required to be maintained in each emergency diesel generator (EDG) fuel oil day tank. The proposed minimum volume of fuel oil ensures that sufficient fuel oil will be available to allow each EDG to operate for one hour at continuous rated load in accordance with the current licensing basis described in Limerick Generating Station (LGS) Updated Final Safety Analysis Report (UFSAR), Section 9.5.4. The proposed amendment has no effect on the performance or operation of the EDGs, and will not affect the long-term reliability of the EDGs. The EDGs will continue to operate as designed to supply the electrical loads assumed to mitigate the consequences of accidents previously evaluated. The proposed change to the EDG fuel oil day tank minimum volume requirement has no effect on accident initiators or assumptions of analyzed events.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

No permanent physical changes to the EDGs, the EDG fuel oil day tanks, or the fuel oil storage and transfer system are involved with the proposed change. The proposed change does not involve the permanent installation of any new or different type of equipment. Operation of the EDGs is associated with mitigating the consequences of an accident, and not accident prevention or initiation. The proposed change ensures that the EDGs will continue to perform their design function.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

There is no defined margin of safety that is affected by the minimum required volume of fuel oil maintained in the EDG fuel oil day

tank. The proposed change does not involve a change to any safety limits, limiting safety system settings, or design parameters for any SSC [structure, system and component]. The proposed change does not impact any safety analysis assumptions and does not involve a change in initial conditions, system response times, or other parameters affecting an accident analysis. The proposed change ensures that sufficient fuel oil will be available to allow each EDG to operate for one hour at continuous rated load in accordance with the current licensing basis described in the LGS UFSAR, Section 9.5.4, and does not adversely affect any equipment important to safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person(s) whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestors/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule,

which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/ requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/ requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/ petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737. Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their submissions.

For further details with respect to this license amendment application, see the application for amendment dated August 24, 2007, supplemented by letter dated June 11, 2008, which are available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 13th day of June, 2008.

For the Nuclear Regulatory Commission.

**Peter J. Bamford,**

*Project Manager, Plant Licensing Branch I–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E8–13968 Filed 6–19–08; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Draft Regulatory Guide: Issuance, Availability

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Issuance and Availability of Draft Regulatory Guide (DG)–1200.

**FOR FURTHER INFORMATION CONTACT:** Mary Drouin, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–6675 or e-mail to *Mary.Drouin@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a draft guide in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information

as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, ''An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities,'' is temporarily identified by its task number, DG–1200, which should be mentioned in all related correspondence. DG–1200 is proposed Revision 2 of Regulatory Guide 1.200.

In 1995, the NRC issued a Policy Statement on the use of probabilistic risk analysis (PRA), encouraging its use in all regulatory matters. That Policy Statement states that ''* * * the use of PRA technology should be increased to the extent supported by the state-of-the-art in PRA methods and data and in a manner that complements the NRC's deterministic approach.'' Since that time, many uses have been implemented or undertaken, including modification of the NRC's reactor safety inspection program and initiation of work to modify reactor safety regulations. Consequently, confidence in the information derived from a PRA is an important issue, in that the accuracy of the technical content must be sufficient to justify the specific results and insights that are used to support the decision under consideration.

This guide describes one acceptable approach for determining whether the quality of the PRA, in total or the parts that are used to support an application, is sufficient to provide confidence in the results, such that the PRA can be used in regulatory decision-making for light-water reactors. This guidance is intended to be consistent with the NRC's PRA Policy Statement. It is also intended to reflect and endorse guidance provided by standards-setting and nuclear industry organizations.

When used in support of an application, this regulatory guide will obviate the need for an in-depth review of the base PRA by NRC reviewers, allowing them to focus their review on key assumptions and areas identified by peer reviewers as being of concern and relevant to the application. Consequently, this guide will provide for a more focused and consistent review process. In this regulatory guide, the quality of a PRA analysis used to support an application is measured in terms of its appropriateness with respect to scope, level of detail, and technical acceptability.

The NRC staff has scheduled a public meeting on July 11, 2008, (9 a.m. to 12 p.m.), at NRC headquarters (11545 Rockville Pike, Rockville, Maryland 20852, conference room T–10A1) to discuss DG–1200. The meeting will focus on the changes in DG–1200 from the previous revision of this guide (*i.e.*, Regulatory Guide 1.200, Revision 1). Call-in capability will be made available for those individuals who can not travel to NRC headquarters; however, only a limited number of call-in lines can be made available. Please contact Mary Drouin (e-mail *Mary.Drouin@nrc.gov* or 307–415–6675), if you plan to call in. The meeting will also be noticed at least 10 days prior to the meeting, which will include an agenda and the call-in number.

## II. Further Information

The NRC staff is soliciting comments on DG–1200 (including any implementation schedule) and its associated regulatory analysis or value/impact statement. Comments may be accompanied by relevant information or supporting data and should mention DG–1200 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Personal information will not be removed from your comments. You may submit comments by any of the following methods:

1. *Mail comments to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. *E-mail comments to*: *NRCREP@nrc.gov.*

3. *Hand-deliver comments to*: Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

4. *Fax comments to*: Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about DG–1200 may be directed to the NRC contact, Mary Drouin at (301) 415–6675 or e-mail to *Mary.Drouin@nrc.gov*.

Comments would be most helpful if received by August 25, 2008. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–1200 are available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML081200566.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *PDR@nrc.gov*.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 16th day of June, 2008.

For the Nuclear Regulatory Commission.

**Stephen C. O'Connor,**

*Acting Branch Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. E8–13966 Filed 6–19–08; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards (ACRS); Subcommittee Meeting on Power Uprates (Hope Creek); Notice of Meeting

The ACRS Subcommittee on Power Uprates will hold a meeting on July 8, 2008, at 11545 Rockville Pike, Rockville, Maryland, Room T–2B3.

The meeting will be open to public attendance, with the exception of portions that may be closed to discuss proprietary information pursuant to 5 U.S.C. 552b(c)(4) for presentations covering information that is proprietary to Dominion Nuclear Connecticut, Inc. (DNC) or its contractor Westinghouse Electric Company LLC.

The agenda for the subject meeting shall be as follows:

**Tuesday July 8, 2008—9 a.m.–5 p.m.**

The Subcommittee will review the staff's safety evaluation associated with the Millstone Power Station Unit 3 stretch power uprate. The

Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, DNC, Westinghouse, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Mr. David Bessette at 301–415–8065, five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007, (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:45 a.m. and 5:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: June 12, 2008.

**Antonio Dias,**

*Chief, Reactor Safety Branch B.*

[FR Doc. E8–14001 Filed 6–19–08; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards (ACRS); Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on July 7, 2008, at 11545 Rockville Pike, Rockville, Maryland, Room T–2B1.

The meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

*Monday July 7, 2008—12 Noon Until 6 p.m.*

The Subcommittee will discuss the peer review of the TRACE code. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, consultants to the staff, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Mr. David Bessette at 301–415–8065, five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007, (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Officer between 7:45 a.m. and 4:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: June 12, 2008.

**Antonio Dias,**

*Chief, Reactor Safety Branch B.*

[FR Doc. E8–13963 Filed 6–19–08; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on July 9–11, 2008, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, October 22, 2007 (72 FR 59574).

**Wednesday, July 9, 2008, Conference Room T–2B3, Two White Flint North, Rockville, Maryland**

*8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*8:35 a.m.–10:30 a.m.: Stretch Power Uprate Application for Millstone Power Station Unit 3* (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff, Dominion Nuclear Connecticut, Inc., and its contractor Westinghouse Electric Company LLC regarding the proposed 7% stretch power uprate for Millstone Power Station Unit 3, and related matters.

*10:45 a.m.–2:15 p.m.: Selected Chapters of the Safety Evaluation Report (SER) Associated with the Economic Simplified Boiling Water Reactor (ESBWR) Design Certification Application (Open/Closed)*—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and General Electric—Hitachi Nuclear Energy (GEH) regarding selected chapters of the NRC staff's SER with Open Items associated with the ESBWR design certification application.

*2:30 p.m.–6 p.m.: Safeguards and Security Matters* (Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft final/proposed rules and associated regulatory guidance in the area of safeguards and security.

*6:15 p.m.–7:30 p.m.: Preparation of ACRS Reports* (Open/Closed)—The Committee will prepare and discuss the proposed ACRS reports on Stretch Power Uprate Application for Millstone Power Station Unit 3, selected chapters of the SER associated with the ESBWR Design Certification Application, and Safeguards and Security Matters.

**Thursday, July 10, 2008, Conference Room T–2B3, Two White Flint North, Rockville, Maryland**

*8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*8:35 a.m.–10:30 a.m.: Status of NRC Staff Activities Associated with Seismic Design Issues at Nuclear Power Plants* (Open)—The Committee will discuss with representatives of the NRC staff the 2008 seismic research program plan, the interim staff guidance on high frequency ground motion, the July 2007 Japan earthquake, and the status of resolution of Generic Safety Issue-199 (GSI–199).

*10:45 a.m.–12:30 p.m.: Containment Overpressure Credit* (Open/Closed)—The Committee will discuss with representatives of the NRC staff and Tennessee Valley Authority technical issues related to crediting of containment overpressure during design basis accidents and special events in support of the extended power uprate for Brown Ferry Units 1, 2, and 3.

*1:30 p.m.–2:15 p.m.: Future Activities/ Report of the Planning and Procedures Subcommittee* (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future ACRS meetings, and report on matters related to the conduct

of ACRS business, including anticipated workload and member assignments.

*2:15 p.m.–2:30 p.m.: Reconciliation of ACRS Comments and Recommendations* (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

*2:45 p.m.–7:30 p.m.: Preparation of ACRS Report* (Open)—The Committee will continue its discussion of a proposed ACRS report on the Stretch Power Uprate Application for Millstone Power Station, Unit 3.

**Friday, July 11, 2008, Conference Room T–2B3, Two White Flint North, Rockville, Maryland**

*8:30 a.m.–1 p.m.: Preparation of ACRS Reports* (Open/Closed)—The Committee will continue its discussion of a proposed ACRS report on the Stretch Power Uprate Application for Millstone Power Station, Unit 3.

*1 p.m.–1:30 p.m.: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Dr. Antonio Dias, Cognizant ACRS staff (301–415–6805), between 7:30 a.m. and 4 p.m. (ET). ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS), which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/*.

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: June 16, 2008.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. E8–14000 Filed 6–19–08; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards (ACRS); Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on July 8, 2008, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

**Tuesday, July 8, 2008, 8 a.m. until 9 a.m.**

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Mr. Sam Duraiswamy (telephone: 301–415–7364) between 7:30 a.m. and 4 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Officer between 7:30 a.m. and 4 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: June 12, 2008.

**Cayetano Santos,**

*Chief, Reactor Safety Branch A.*

[FR Doc. E8–13982 Filed 6–19–08; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Generalized System of Preferences (GSP): Initiation of a Review To Consider the Designation of the Socialist Republic of Vietnam as a Beneficiary Developing Country Under the GSP

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice and solicitation of public comment.

**SUMMARY:** This notice announces the initiation of a review to consider designating the Socialist Republic of Vietnam as a beneficiary developing country (BDC) for purposes of the GSP program, and solicits public comments on whether Vietnam meets certain eligibility criteria for designation as a BDC. Comments are due by Monday, August 4, 2008, and must be submitted in accordance with the requirements set out below.

**ADDRESSES:** Submit comments by electronic mail (e-mail) to: *FR0711@USTR.EOP.GOV.* (Note: the digit before the number in the e-mail address is the number zero, not a letter.)

**FOR FURTHER INFORMATION CONTACT:** For assistance, contact Regina Teeter, USTR's GSP Office at 202–395–6971.

**SUPPLEMENTARY INFORMATION:** The GSP Subcommittee of the Trade Policy Staff Committee (TPSC) has initiated a review in order to make a recommendation to the President as to whether Vietnam meets the eligibility criteria of the GSP statute. After considering the recommendation, the President is authorized to, and may, designate Vietnam as a BDC for purposes of the GSP program.

Interested persons are invited to submit comments on whether Vietnam meets the eligibility criteria set forth below and in section 502(c) of the Trade Act of 1974, as amended (19 U.S.C. 2462(c)) (the ''Act'').

**Eligibility Criteria**

The trade benefits of the GSP program are available to any country that the President designates as a BDC for purposes of the GSP program. In designating countries as BDCs, the President must consider among other factors, the criteria in section 502(c) of the Act. Section 502(c) provides that, in determining whether to designate any country as a GSP BDC, the President shall take into account:

1. An expression by such country of its desire to be so designated;

2. The level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which the President deems appropriate;

3. Whether or not other major developed countries are extending generalized preferential tariff treatment to such country;

4. The extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

5. The extent to which such country is providing adequate and effective protection of intellectual property rights;

6. The extent to which such country has taken action to—

(a) Reduce trade distorting investment practices and policies (including export performance requirements); and (b) Reduce or eliminate barriers to trade in services; and

7. Whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights. The term ''internationally recognized worker rights'' is defined in section 507(4) of the Act, as amended, (19 U.S.C. 2467), to mean: (A) The right of association; (B) the right to organize and bargain collectively; (C) a prohibition on the use of any form of forced or compulsory labor; (D) a minimum age for the employment of children and a prohibition on the worst forms of child labor as defined in section 507(6) of the Act; and (E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

**Requirements for Submissions**

Comments must be submitted, in English, to the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee (TPSC) as soon as possible, but not later than 5:00 p.m., August 4, 2008.

In order to facilitate prompt processing of submissions, USTR strongly recommends that comments be set out in digital files attached to e-mails transmitted to the following address: *FR0711@ustr.eop.gov* (Note: The digit before the number in the e-mail address is the number zero, not a letter). If you are unable to provide comments by e-mail, please contact Regina Teeter, USTR's GSP Office at (202) 395–6971 to arrange for an alternative method of transmission.

Comments should be provided in a single copy and must not exceed 30 single-spaced standard letter-size pages in 12-point type or a digital file size of three megabytes. E-mails should include the following subject line: ''Designation of the Socialist Republic of Vietnam as a GSP Beneficiary Country.'' The transmittal message or cover letter accompanying a submission must be set out exclusively in the digital file attached to the e-mail transmission—not in the message portion of e-mail—and must include the sender's name, organization name, address, telephone number and e-mail address.

Digital files must be submitted in one of the following formats: WordPerfect (.WPD), Adobe (.PDF), MSWord (.DOC), or text (.TXT) files. Comments may not be submitted as electronic image files or contain embedded images, e.g., ''.JPG'', ''.TIF'', ''.BMP'', or ''.GIF''. Spreadsheet data may be submitted as Excel files, formatted for printing on 8½ × 11 inch paper. To the extent possible, any data accompanying the submission should be set out in the same file as the submission itself, and not in a separate file.

If a submission contains business confidential information that the submitter wishes to protect from public disclosure, the confidential submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of each page. In addition, the submission must be accompanied by a non-confidential version that indicates, with asterisks, where confidential information was redacted or deleted. The top and bottom of each page of the non-confidential version must be marked either ''PUBLIC VERSION'' or ''NON-CONFIDENTIAL''. Business confidential comments that are submitted without the required markings or that are not accompanied by a properly marked non-confidential version as set forth above may not be accepted or may be treated as public documents.

The digital file name assigned to any business confidential version of a submission should begin with the characters ''BC-'', and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the person (government, company, union, association, etc.) making the submission.

Public versions of all documents relating to this review will be available for review approximately two weeks after the relevant due date by appointment in the USTR public reading room, 1724 F Street, NW., Washington, DC. Appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (202) 395–6186.

**Meredith Broadbent,**

*Assistant U.S. Trade Representative for Industry, Market Access and Telecommunications.*

[FR Doc. E8–14017 Filed 6–19–08; 8:45 am]

**BILLING CODE 3190–W8–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57962; File No. SR–NASDAQ–2008–039]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of Managed Fund Shares

June 13, 2008.

### I. Introduction

On April 30, 2008, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change seeking to adopt new Nasdaq Rule 4420(o) to list and trade, or trade pursuant to unlisted trading privileges (''UTP''), securities issued by actively managed, open-end investment management companies (''Managed Fund Shares'') and to amend certain other Nasdaq rules to incorporate references to such Managed Fund Shares. On May 7, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on May 14, 2008.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

### II. Description of the Proposal

The Exchange proposes to add new Nasdaq Rule 4420(o) to permit the listing and trading, or trading pursuant to UTP, of Managed Fund Shares.[4] The Exchange also proposes to make conforming changes to the introductory paragraph of Nasdaq Rule 4420, Nasdaq Rules 4120(a)(9) and 4120(b)(4)(A), which relate to trading halts, and Nasdaq Rule 4540, which relates to entry and annual fees for issuers, to incorporate references to Managed Fund Shares.

Proposed Listing Rules for Managed Fund Shares Proposed Nasdaq Rule 4420(o)(2)(A) provides that Nasdaq will file separate proposals under Section 19(b) of the Act before the listing and/or trading of Managed Fund Shares. Proposed Nasdaq Rule 4420(o)(2)(B) provides that transactions in Managed Fund Shares will occur throughout Nasdaq's trading hours.[5] Proposed Nasdaq Rule 4420(o)(2)(C) provides that the minimum price variation for quoting and entry of orders in Managed Fund Shares will be $0.01. Proposed Rule Nasdaq 4420(o)(2)(D) provides that Nasdaq will implement written surveillance procedures for Managed Fund Shares. Proposed Nasdaq Rule 4420(o)(2)(E) provides that, for Managed Fund Shares based on an international or global portfolio, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 (''1940 Act'') for such series of Managed Fund Shares must state that such series must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

*Proposed Definitions.* Proposed Nasdaq Rule 4420(o)(3)(A) defines the term ''Managed Fund Share'' as a security that: (1) Represents an interest in a registered investment company (''Investment Company'') organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (2) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (''NAV''); and (3) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV.

In addition, proposed Nasdaq Rule 4420(o)(3)(B) defines the term ''Disclosed Portfolio'' as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of NAV at the end of the business day. Proposed Nasdaq Rule 4420(o)(3)(C) defines the term ''Intraday Indicative Value'' as the estimated indicative value of a Managed Fund Share based on current information regarding the value of the securities and other assets in the Disclosed Portfolio. Proposed Nasdaq Rule 4420(o)(3)(D) defines the term ''Reporting Authority'' as Nasdaq, an institution, or a reporting service designated by Nasdaq or by the exchange that lists a particular series of Managed Fund Shares (if Nasdaq is trading such series pursuant to UTP) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Intraday Indicative Value, the Disclosed Portfolio, the amount of any cash distribution to holders of Managed Fund Shares, NAV, or other information relating to the issuance, redemption, or trading of Managed Fund Shares. A series of Managed Fund Shares may have more than one Reporting Authority, each having different functions.

*Initial and Continued Listing.* Proposed Nasdaq Rule 4420(o)(4) sets forth the initial and continued listing criteria applicable to Managed Fund Shares.[6] Proposed Nasdaq Rule 4420(o)(4)(A)(i) provides that, for each series of Managed Fund Shares, Nasdaq

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 57800 (May 8, 2008), 73 FR 27874 (''Notice'').

[4] Proposed Nasdaq Rule 4420(o) is substantively identical to NYSE Arca Equities Rule 8.600. *See* Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR-NYSEArca-2008–25) (approving, among other things, listing standards for Managed Fund Shares).

[5] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 7 a.m. to 9:30 a.m; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m.).

[6] The Exchange represented that, for initial and/or continued listing, Managed Fund Shares must also be in compliance with Rule 10A–3 under the Act. *See* 17 CFR 240.10A–3. In addition, the Exchange represented that, with respect to a series of Managed Fund Shares, the investment adviser and its related personnel are subject to Rule 204A–1 under the Investment Advisers Act of 1940 (''Advisers Act''), which relates to codes of ethics for investment advisers. *See* 17 CFR 275.204A–1. Rule 204A–1 requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, the Exchange noted that ''firewall'' procedures, as well as procedures designed to prevent the misuse of non-public information by an investment adviser, must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act (17 CFR 275.206(4)-7) makes it unlawful for an investment adviser to provide investment advice to clients, unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the rules thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of such policies and procedures and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering such policies and procedures. *See* also Section 204A of the Advisers Act (15 U.S.C. 80b-4a) (requiring investment advisers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by such investment adviser or any person associated with such investment adviser).

will establish a minimum number of Managed Fund Shares required to be outstanding at the time of commencement of trading. In addition, under proposed Nasdaq Rule 4420(o)(4)(A)(ii), Nasdaq must obtain a representation from the issuer of each series of Managed Fund Shares that the NAV per share for such series will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Proposed Nasdaq Rule 4420(o)(4)(B) provides that each series of Managed Fund Shares will be listed and traded subject to the application of the following continued listing criteria: (1) The Intraday Indicative Value for Managed Fund Shares must be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Managed Fund Shares trade on Nasdaq; (2) the Disclosed Portfolio must be disseminated at least once daily and made available to all market participants at the same time; and (3) the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.

Proposed Nasdaq Rule 4420(o)(4)(B)(iii) provides that Nasdaq will consider the suspension of trading in, or removal from listing of, a series of Managed Fund Shares under any of the following circumstances: (1) If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Fund Shares, there are fewer than 50 beneficial holders of the series of Management Fund Shares for 30 or more consecutive trading days; (2) if the value of the Intraday Indicative Value is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time; (3) if the Investment Company issuing the Managed Fund Shares has failed to file any filings required by the Commission or if Nasdaq is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to the Investment Company with respect to the series of Managed Fund Shares; or (4) if such other event shall occur or condition exists which, in the opinion of Nasdaq, makes further dealings on Nasdaq inadvisable.

Proposed Nasdaq Rule 4420(o)(4)(B)(iv) provides that, if the Intraday Indicative Value of a series of Managed Fund Shares is not being disseminated as required, Nasdaq may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value occurs. If the interruption to the dissemination of the Intraday Indicative Value persists past the trading day in which it occurred, Nasdaq will halt trading no later than the beginning of the trading day following the interruption. If a series of Managed Fund Shares is trading on Nasdaq pursuant to UTP, Nasdaq will halt trading in that series, as specified in Nasdaq Rules 4120 and 4121. In addition, if the Exchange becomes aware that NAV or the Disclosed Portfolio with respect to a series of Managed Fund Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV or the Disclosed Portfolio is available to all market participants.

In addition, proposed Nasdaq Rule 4420(o)(4)(B)(v) provides that, upon termination of an Investment Company, the Managed Fund Shares issued in connection with such entity must be removed from listing on Nasdaq. Proposed Nasdaq Rule 4420(o)(4)(B)(vi) provides that voting rights must be as set forth in the applicable Investment Company prospectus. Proposed Nasdaq Rule 4420(o)(5) relates to the limitation of liability of the Exchange in connection with an issuance of a series of Managed Fund Shares.

Proposed Nasdaq Rule 4420(o)(6) relates to obligations with respect to those Managed Fund Shares that receive an exemption from certain prospectus delivery requirements under Section 24(d) of the 1940 Act. Lastly, proposed Nasdaq Rule 4420(o)(7) provides that, if the investment adviser of the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser must erect a ''firewall'' between such investment adviser and broker-dealer with respect to access to information regarding the composition and/or changes to the Investment Company's portfolio. This proposed rule also requires personnel who make decisions on the Investment Company's portfolio composition to be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Investment Company's portfolio.

*Other Proposed Rule Changes*

*The Exchange also proposes to amend:* (1) The introductory paragraph of Nasdaq Rule 4420 to add a reference to new paragraph (o) thereunder; (2) Nasdaq Rule 4120(a)(9) and Nasdaq Rule 4120(b)(4)(A) to add references to Managed Fund Shares with respect to trading halts; [7] and (3) Nasdaq Rule 4540(a) and (b) to add references to Managed Fund Shares to those securities already covered under the rule relating to both entry and annual fees.

*Trading Halts*

Nasdaq will halt trading in Managed Fund Shares under the conditions specified in Nasdaq Rules 4120 and 4121, as proposed to be amended, and in proposed Nasdaq Rule 4420(o)(4)(B)(iv), as discussed above. With respect to trading of Managed Fund Shares pursuant to UTP, the conditions for a halt include a regulatory halt by the listing market, and Nasdaq will stop trading Managed Fund Shares if the listing market delists them. Additionally, Nasdaq may cease trading Managed Fund Shares if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market.

*Trading Rules*

Nasdaq deems Managed Fund Shares to be equity securities, thus rendering trading in the Managed Fund Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in Managed Fund Shares from 7 a.m. until 8 p.m. Eastern Time.[8]

*Surveillance*

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (including exchange-traded funds) to monitor trading in Managed Fund Shares and represents that such procedures are adequate to address any concerns regarding the trading of Managed Fund Shares on Nasdaq. Trading of Managed Fund Shares on Nasdaq will be subject to surveillance procedures of the Financial Industry Regulatory Authority (''FINRA'') for equity securities, in general, and exchange-traded funds, in particular.[9] The Exchange may also obtain information via the Intermarket Surveillance Group (''ISG'') from other

[7] Nasdaq also seeks to make an unrelated, minor typographical change to Nasdaq Rule 4120(b)(4)(A) with respect to the term ''Trust Issued Receipt.''

[8] *See supra* note 5.

[9] The Exchange stated that FINRA surveils trading on Nasdaq pursuant to a regulatory services agreement. Nasdaq is responsible for FINRA's performance under this regulatory services agreement.

exchanges who are members or affiliate members of ISG.

*Information Circular*

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading Managed Fund Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Managed Fund Shares in Creation Units (and that Managed Fund Shares are not individually redeemable); (2) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in Managed Fund Shares to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing newly issued Managed Fund Shares prior to or concurrently with the confirmation of a transaction; [10] (5) the risks involved in trading Managed Fund Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Fund value will not be calculated or publicly disseminated; (6) any exemptive, no-action, or interpretive relief granted by the Commission from any rules under the Act; (7) related fees and expenses; (8) trading hours of the Managed Fund Shares; (9) NAV calculation and dissemination; and (10) trading information.

Additional discussion regarding the key features of Managed Fund Shares, including the registration requirement under the 1940 Act, exemptive relief from certain requirements under the 1940 Act, intraday trading, creations and redemptions, the Disclosed Portfolio, and the Intraday Indicative Value can be found in the Notice.[11]

## III. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Commission notes that it has previously approved substantively identical listing standards for Managed Fund Shares for other national securities exchanges.[14]

The Commission finds that Nasdaq's proposal contains adequate rules and procedures to govern the listing and trading of Managed Fund Shares on the Exchange.[15] Prior to listing and/or trading on the Exchange, Nasdaq must file a separate proposed rule change pursuant to Section 19(b) of the Act for each series of Managed Fund Shares. All such securities listed and/or traded under proposed Nasdaq Rule 4420(o) will be subject to the full panoply of Nasdaq rules and procedures that currently govern the trading of equity securities on the Exchange.

For the initial listing of each series of Managed Fund Shares under proposed Nasdaq Rule 4420(o), the Exchange must establish a minimum number of Managed Fund Shares required to be outstanding at the commencement of trading. In addition, the Exchange must obtain a representation from the issuer of Managed Fund Shares that the NAV per share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

The Commission believes that the proposed continued listing and trading standards under proposed Nasdaq Rule 4420(o)(4)(B) are adequate to ensure transparency of key values and information regarding the securities. For continued listing of each series of Managed Fund Shares, the Intraday Indicative Value must be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Managed Fund Shares trade on the Exchange. Further, the Disclosed Portfolio must be disseminated at least once daily and made available to all market participants at the same time.

The Commission finds that the Exchange's rules with respect to trading halts under proposed Nasdaq Rule 4120(a)(9), proposed Nasdaq Rule 4120(b)(4)(A), and proposed Nasdaq Rule 4420(o)(4)(B)(iv) should help ensure the availability of key values and information relating to Managed Fund Shares. If the Intraday Indicative Value is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value occurs. If the interruption of such value persists past the trading day in which it occurred, the Exchange must halt trading no later than the beginning of the trading day following the interruption.[16] In addition, if the Exchange becomes aware that the NAV or Disclosed Portfolio related to a series of Managed Fund Shares is not being disseminated to all market participants at the same time, the Exchange will halt trading in such series of Managed Fund Shares.[17] Finally, Nasdaq may cease trading Managed Fund Shares if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market.

The Exchange may also consider the suspension of trading in, or removal from listing of, a series of Managed Fund Shares if: (1) Following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Fund Shares, there are fewer than 50 beneficial holders of the series of the Managed Fund Shares for 30 or more consecutive trading days; (2) the value of the Portfolio Indicative Value is no longer calculated or available, or the Disclosed Portfolio is not made available to all market participants at the same time; (3) the Investment

[10] The Exchange further noted that: (1) *Investors* purchasing Managed Fund Shares directly from a Fund will receive a prospectus; and (2) members purchasing Managed Fund Shares from a Fund for resale to investors will deliver a prospectus to such investors.

[11] *See* Notice, *supra* note 3.

[12] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Securities Exchange Act Release Nos. 57514 (March 17, 2008), 73 FR 15230 (March 21, 2008) (SR-Amex-2008–02) (approving, among other things, listing standards for Managed Fund Shares); and 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR-NYSEArca-2008–25) (approving, among other things, listing standards for Managed Fund Shares).

[15] The Commission believes that the proposed rules and procedures are adequate with respect to the Managed Fund Shares. However, the Commission notes that other proposed series of Managed Fund Shares may require additional Exchange rules and procedures to govern their listing and trading on the Exchange. For example, in the case of a proposed series of Managed Fund Shares that are based on a portfolio, at least in part, of non-U.S. securities, rules relating to comprehensive surveillance sharing agreements and quantitative initial and continued listing standards may be required.

[16] Under proposed Nasdaq Rule 4420(o)(4)(B)(iv), if a series of Managed Fund Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange will halt trading in that series, as specified in Nasdaq Rules 4120, as proposed to be amended, and 4121. *See* Nasdaq Rules 4120 and 4121 (setting forth rules regarding trading halts for certain derivative securities products).

[17] The Exchange may resume trading in such series of Managed Fund Shares only when the NAV or Disclosed Portfolio is disseminated to all market participants. *See* proposed Nasdaq Rule 4420(o)(4)(B)(iv).

Company issuing the Managed Fund Shares has failed to file any required filings with the Commission, or if the Exchange becomes aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to the Investment Company with respect to the series of Managed Fund Shares; or (4) such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings of the Managed Fund Shares on the Exchange inadvisable.

The Commission believes that the requirements of proposed Nasdaq Rule 4420(o) should help to prevent trading when a reasonable degree of transparency cannot be assured and to maintain a fair and orderly market for Managed Fund Shares. The Commission also believes that the proposed listing and trading rules for Managed Fund Shares, many of which track existing Exchange rules relating to exchange-traded funds, are reasonably designed to promote a fair and orderly market for such Managed Fund Shares. Specifically, proposed Nasdaq Rule 4420(o)(7) requires that: (1) If the investment adviser of the Investment Company is affiliated with a broker-dealer, such investment adviser must erect a ''firewall'' between such investment adviser and broker-dealer with respect to access to information regarding the composition and/or changes to the Investment Company's portfolio; and (2) personnel who make decisions on the Investment Company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Investment Company's portfolio.[18] In addition, proposed Nasdaq Rule 4420(o)(4)(B)(ii)(b) requires that the Reporting Authority that provides the Disclosed Portfolio implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio. The proposed rules also require surveillance procedures,[19] establish trading guidelines,[20] and impose other requirements.[21]

*Conforming Changes and Listing Fees*

Trading in Managed Fund Shares will be halted as provided in Nasdaq Rule 4120(a)(9), as proposed to be amended. In addition, Managed Fund Shares will be included under the term ''Derivative Securities Product,'' as defined in Nasdaq Rule 4120(b)(4)(A), in connection with trading halts for trading pursuant to UTP on the Exchange. The Commission also notes that Managed Fund Shares will be included in Nasdaq Rules 4540(a) and (b), and, as a result, the Exchange's listing fees will be applicable to a series of Managed Fund Shares. The Commission finds that the conforming changes made to the Exchange's rules, including those governing trading halts and listing fees, are reasonable and promote transparency of the rules to be imposed with respect to a series of Managed Fund Shares listed and traded on the Exchange.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–NASDAQ–2008–039), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–13914 Filed 6–19–08; 8:45 am]

**BILLING CODE 8010–01–P**

[18] *See supra* note 6.

[19] *See* proposed Nasdaq Rule 4420(o)(2)(D) (providing that the Exchange will implement written surveillance procedures for Managed Fund Shares).

[20] *See* proposed Nasdaq Rule 4420(o)(2)(B) and (C) (providing that transactions in Managed Fund Shares will occur throughout Nasdaq's trading hours and that the minimum price variation for quoting and entry of orders in Managed Fund Shares must be $0.01). *See also supra* note 5.

[21] *See e.g.,* proposed Nasdaq Rule 4420(o)(2)(E) (requiring certain statutory prospectuses for an issue of Managed Fund Shares based on an international or global portfolio to make certain specific statements regarding creations and redemptions); proposed Nasdaq Rule 4420(o)(4)(B)(v) (requiring, upon termination of an Investment Company, the Managed Fund Shares issued in connection with such Investment Company to be removed from listing on the Exchange); proposed Nasdaq Rule 4420(o)(4)(B)(vi) (providing that the voting rights will be as set forth in the applicable Investment Company prospectus); and proposed Nasdaq Rule 4420(o)(6) (requiring certain disclosures to be made in the case of a series of Managed Fund Shares that are subject of an order by the Commission exempting such securities from certain prospectus delivery requirements under Section 24(d) of the 1940 Act and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933).

[22] 15 U.S.C. 78s(b)(2).

[23] *See* 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57965; File No. SR–NASDAQ–2006–060]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, To Establish Nasdaq Last Sale Data Feeds

June 16, 2008.

### I. Introduction

On December 19, 2006, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to create, and impose fees for, the ''Nasdaq Last Sale for Nasdaq'' and ''Nasdaq Last Sale for NYSE/Amex'' data feeds (''Nasdaq Last Sale Data Feeds''). The Nasdaq Last Sale Data Feeds would provide real-time last sale information for executions occurring within the Nasdaq Market Center, as well as those reported to the jointly operated FINRA/Nasdaq Trade Reporting Facility (''Nasdaq TRF''). On January 26, 2007, Nasdaq filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on February 14, 2007.[3] The Commission received three comment letters on the proposal.[4] On December 13, 2007, Nasdaq responded to the comment letters.[5] On June 10, 2008, Nasdaq filed Amendment No. 2 to the proposed rule change. In Amendment No. 2, Nasdaq proposed to impose fees for the Nasdaq Last Sale Data Feeds only for a four-month pilot period beginning July 1, 2008.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55255 (February 8, 2007), 72 FR 7100.

[4] Letters to Nancy M. Morris, Secretary, Commission, from Christopher Gilkerson and Gregory Babyak, Co-Chairs of the Market Data Subcommittee of the Technology and Regulation Committee, Securities Industry and Financial Markets Association (''SIFMA''), dated March 7, 2007 (''SIFMA Letter''); Chuck Thompson, President, eSignal, Interactive Data Corporation, dated March 8, 2007 (''eSignal Letter''); and letter to Chairman Cox, Commission, from Alan Davidson, Senior Policy Counsel, Google Inc. (''Google''), dated June 12, 2007 (''Google Letter'').

[5] Letters to Nancy M. Morris, Secretary, Commission, from Jeffrey S. Davis, Vice President and Deputy General Counsel, Nasdaq, dated December 13, 2007.

[6] On June 2, 2008, Nasdaq filed a proposed rule change, designated as eligible for immediate

The Commission is publishing this notice to solicit comments on the proposed rule change as modified by Amendment Nos. 1 and 2 and is simultaneously approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

## II. Description of the Proposal

Nasdaq proposes to create two separate data products containing real-time last sale information for trades executed on Nasdaq or reported to the Nasdaq TRF.[7] First, the Nasdaq Last Sale for Nasdaq data product would be a real-time data feed providing last sale information, including execution price, volume, and time, for Nasdaq securities executions on the Nasdaq system or reported to the Nasdaq TRF. Second, the Nasdaq Last Sale for NYSE/Amex data product would be a real-time data feed providing last sale information, including execution price, volume, and time, for NYSE and Amex securities executions on the Nasdaq system or reported to the Nasdaq TRF.

Nasdaq proposes two different pricing models, one for clients that are able to maintain username/password entitlement systems and/or quote counting mechanisms to account for usage, and a second for those that are not. Firms with the ability to maintain username/password entitlement systems or quote counting mechanisms would be eligible for a specified fee schedule for the Nasdaq Last Sale for Nasdaq product and a separate fee schedule for the Nasdaq Last Sale for NYSE/Amex product. This pricing would be ''stair-stepped,'' such that the tiered fees would be effective for incremental users in the new tier. For example, a distributor of the Nasdaq Last Sale for Nasdaq product with 20,000 users would pay $0.60 for each of the first 10,000 users and $0.48 for each of the next 10,000 users. Distributors may elect to pay per query for their users if, for example, a substantial portion of their users request a relatively small number of queries each month. Firms would also be permitted to ''cap'' their payments for individual queries at the corresponding monthly user rate.

Firms that are unable to maintain username/password entitlement systems or quote counting mechanisms would also have options for purchasing the Nasdaq Last Sale Data Feeds. These firms could choose between a ''Unique Visitor'' model for Internet delivery or a ''Household'' model for Television delivery. Unique Visitor and Household populations would have to be reported monthly and validated by a third party vendor or ratings agency approved by Nasdaq at Nasdaq's sole discretion. This proposed pricing would also be stair-stepped such that the tiered fees would be effective for the incremental users in the new tier. For example, a distributor of Nasdaq Last Sale for Nasdaq product that reports 600,000 Unique Visitors would pay $0.036 for the first 100,000 visitors and $0.03 for the next 500,000 visitors. A Distributor that reports 3,000,000 households reached would pay $0.0096 for each of the first 1,000,000 households and $0.0084 for each of the next 2,000,000 households.

In addition, Nasdaq proposes to offer reduced fees for a single distributor of Nasdaq Last Sale Data Feeds via multiple distribution mechanisms. Specifically, Nasdaq would discount the applicable fees for distribution of Nasdaq Last Sale Data Feeds via Television for Distributors that also distribute those products via the Internet and achieve a new pricing tier for Unique Visitors, Users, or Queries. Nasdaq proposes the following tiered discounts for a firm's Television fees based on its number of Unique Visitors, Users, or Queries—10% discount for the second tier, 15% discount for the third tier, and a 20% discount for the fourth tier. In addition, Nasdaq proposes to establish a cap of $100,000 per month for Nasdaq Last Sale for Nasdaq data product and $50,000 per month for Nasdaq Last Sale for NYSE/Amex data product.

As with other Nasdaq proprietary products, all distributors of the Nasdaq Last Sale for Nasdaq and/or Nasdaq Last Sale for NYSE/Amex products would pay a single $1500/month Nasdaq Last Sale Distributor Fee in addition to any applicable usage fees. The $1,500 monthly fee would apply to all distributors and would not vary based on whether the data is distributed internally or externally or via both the Internet and Television.

## III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, to be implemented on a four-month pilot basis, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, it is consistent with Section 6(b)(4) of the Act,[9] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,[11] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,[12] adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.[13]

The Commission received two comment letters expressing concerns with the proposed rule change, and one comment letter supporting the proposed rule change. Generally, SIFMA and eSignal suggested that Nasdaq did not adequately demonstrate that the proposed rule change was consistent with the Act.[14] SIFMA asserted that Nasdaq had failed to demonstrate that its proposal met the relevant requirements of the Act, including that its market data fees be fair and reasonable and not unreasonably

effectiveness pursuant to Section 19(b)(3)(A) of the Act, to offer the Nasdaq Last Sale Data Feeds immediately without charge for one month, and thereafter impose fees for an additional five-month pilot period. *See* SR–NASDAQ–2008–050. On June 16, 2008, Nasdaq withdrew SR–NASDAQ–2008–050, except for the provisions permitting Nasdaq to offer the Nasdaq Last Sale Data Feeds at no charge for one month.

[7] In Amendment No. 2, Nasdaq removed from the proposal Nasdaq Market Velocity and Nasdaq Market Forces services that Nasdaq included in its initial proposal and Amendment No. 1.

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(8).

[12] 17 CFR 242.603(a).

[13] Nasdaq is an exclusive processor of its last sale data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes data on an exclusive basis on its own behalf.

[14] *See* SIFMA Letter and eSignal Letter.

discriminatory.[15] eSignal asserted that Nasdaq's proposal unreasonably discriminated against smaller market data distributors.[16] Google, however, expressed strong support for the proposal and noted its enthusiasm regarding the opportunity to give more of its users access to real-time financial information online.[17]

The Commission notes that Nasdaq amended the proposed rule change so that its fees would be imposed only for a four-month pilot period. On June 4, 2008, the Commission published for public comment a draft approval order that sets forth a market-based approach for analyzing proposals by self-regulatory organizations to impose fees for ''non-core'' market data products that would encompass the Nasdaq Last Sale Data Feeds.[18] The Commission believes that Nasdaq's proposal is consistent with the Act for the reasons noted preliminarily in the Draft Approval Order. Pending review by the Commission of comments received on the Draft Approval Order, and final Commission action thereon, the Commission believes that approving Nasdaq's proposal on a pilot basis would be beneficial to investors and in the public interest, in that it should result in broad public dissemination of real-time pricing information. Therefore, the Commission is approving Nasdaq's proposed fees for a four-month pilot beginning July 1, 2008. The broader approach ultimately taken by the Commission with respect to non-core market data fees will necessarily guide Commission action regarding fees for the Nasdaq Last Sale Data Feeds beyond the four-month pilot period.

The Commission finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto, before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** . As noted above, accelerating approval of this proposal should benefit investors by facilitating their prompt access to widespread, free, real-time pricing information contained in the Nasdaq Last Sale Data Feeds. In addition, the Commission notes that the proposal is approved only on a four-month pilot period while the Commission analyzes comments on the Draft Approval Order. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act, to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

[15] *See* SIFMA Letter.

[16] *See* eSignal Letter.

[17] *See* Google Letter.

[18] *See* Securities Exchange Act Release No. 57917 (June 4, 2008), 73 FR 32751 (June 10, 2008) (Notice of Proposed Order Approving Proposal by NYSE Arca, Inc. to Establish Fees for Certain Market Data and Request for Comment) (''Draft Approval Order'').

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NASDAQ–2006–060 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2006–060. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2006–060 and should be submitted on or before July 11, 2008.

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–NASDAQ–2006–060), as modified by Amendment Nos. 1 and 2, be, and it hereby is, approved on an accelerated basis until October 31, 2008.

By the Commission.

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–13955 Filed 6–19–08; 8:45 am]

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[19] 15 U.S.C. 78s(b)(2).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57964; File No. SR–NASD–2006–005]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Order Approving Proposed Rule Change and Amendment No. 1 Thereto To Expand the Scope of NASD Rule 2440 and Interpretive Material 2440–1 Relating to Fair Prices and Commissions To Apply to All Securities Transactions

June 13, 2008.

## I. Introduction

On January 19, 2006, the National Association of Securities Dealers, Inc. (''NASD'') (n/k/a Financial Industry Regulatory Authority, Inc. (''FINRA'')) filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to expand the coverage of NASD Rule 2440 and Interpretive Material (''IM'') 2440 relating to fair prices and commissions, to all securities transactions that involve members and their customers.[3] The proposed rule change was published for comment in the **Federal Register** on April 4, 2006.[4] The Commission received two comment letters regarding the proposal.[5] NASD

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] IM–2440–1, which was designated as IM–2440 at the time of this filing, was proposed to be re-numbered in SR–NASD–2003–141, which was filed before this proposal was filed and approved while this proposal was pending. *See* Securities Exchange Act Release No. 55638 (April 16, 2007), 72 FR 20150 (April 23, 2007) (SR–NASD–2003–141).

[4] *See* Securities Exchange Act Release No. 53562 (March 29, 2006), 71 FR 16849.

[5] *See* submission via SEC WebForm from Dan Mayfield, President, Sanderlin Securities, dated April 6, 2006 (''First Commenter''); letter from Mary C.M. Kuan, Vice President and Assistant General Counsel, The Bond Market Association, to Nancy

responded to the comment letters on October 2, 2006.[6] On May 30, 2008, FINRA filed Amendment No. 1 to the proposed rule change.[7] This order approves the proposed rule change, as modified by Amendment No. 1.

## II. Description of the Proposed Rule Change

FINRA proposes to amend NASD Rule 2440, which requires that a member charge fair commissions and service charges, and buy or sell securities at fair prices, in over-the-counter (''OTC'') securities transactions with a customer. FINRA also proposes to amend IM–2440–1, which provides further guidance on the commissions and prices that a member may charge a customer in an OTC transaction. Specifically, FINRA proposes to expand the scope of Rule 2440 and IM–2440–1 to include all securities transactions involving members and their customers, including transactions between members and their customers that are executed on an exchange.[8]

## III. Summary of Comments

The Commission received two comment letters in response to the proposed rule change.[9] One commenter, using the example of a municipal bond that had not sold in several years, stated that the proposed rule was problematic for the same reason that the existing rule was problematic; specifically, that a mark-up, especially in a highly illiquid market, may have little relation to fair pricing.[10]

The main concern the other commenter raised was which self-regulatory organization had jurisdiction over the pricing of an exchange transaction.[11] The commenter stated that NASD did not explain how Rule 2440 would be applied to exchange transactions.[12] The commenter questioned whether, under the proposal, NASD and the exchanges would have overlapping authority over exchange transactions,[13] as well as whether NASD had authority under Section 15A of the Act to regulate exchange transactions.[14] The commenter noted that the proposal would result in increased surveillance by NASD of exchange transactions, which NASD could use to justify increasing its regulatory fees for broker-dealers.[15] Finally, the commenter said that, in the event the Commission approves the proposal, it should require NASD to enter into Rule 17d–2 agreements with the various exchanges to minimize regulatory duplication.[16]

In response to the comment letters, NASD said that the First Commenter's submission was not relevant to the proposed rule change, and that the Second Commenter only raised procedural, not substantive, issues.[17] According to NASD, the First Commenter's submission was not germane to the proposed rule change, as it dealt with municipal securities.[18] NASD stated that Rule 2440 and IM–2440–1 do not currently apply to municipal securities, and will not apply to municipal securities under the proposed rule change.[19]

In response to the Second Commenter, NASD said that its regulatory jurisdiction is not limited to OTC trading, but encompasses members' conduct on all markets with respect to customer transactions.[20] As such, the application of Rule 2440 and IM–2440–1 should not vary according to where the order is ultimately executed.[21] According to NASD, the proposal will not create duplicative regulation, as it was not aware of another SRO that had established similar rules relating to a member's pricing of transactions with a customer.[22] NASD stated that a Rule 17d–2 agreement was thus inapplicable in this context.[23] Even if another SRO maintained similar rules relating to the pricing of customer transactions, however, NASD said that some regulatory overlap is inevitable, given the existence of multiple SROs.[24] NASD also asserted that it did not intend to change its current formula for calculating regulatory fees for members, and that the proposal would not extend to non-members.[25]

## IV. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change, the comment letters, and NASD's response to the comment letters, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[26] and, in particular, Section 15A(b)(6) of the Act,[27] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the response to comments addressed the concerns the commenters raised. In addition, in Amendment No. 1, FINRA stated that the proposed rule change will apply to charges imposed by members on customers for trades that are executed on an exchange, and not to the execution prices that are obtained on the exchange.

The proposed rule change extends broker-dealer fair pricing obligations to all securities transactions between members and their customers, except for those transactions involving municipal and exempt securities. By extending the requirement to charge fair commissions and mark-ups to customers in connection with exchange transactions, in addition to OTC transactions, the proposed rule change should enhance investor protection.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–2006–005), as modified by Amendment No. 1 be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–13945 Filed 6–19–08; 8:45 am]

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M. Morris, Secretary, Commission, dated May 4, 2006 (''Second Commenter'').

[6] *See* letter from Stephanie M. Dumont, Vice President and Associate General Counsel, NASD, to Nancy M. Morris, Secretary, Commission, dated October 2, 2006 (''NASD letter'').

[7] In Amendment No. 1, FINRA clarified that the proposed rule change will regulate the charges imposed by members on customers for trades that are executed on an exchange, and not the execution prices that are obtained on the exchange. Because the Amendment is technical in nature, it is not subject to notice and comment.

[8] The proposed amendments would only apply to transactions between members and their customers, and not to transactions among members.

Rule 2440 and IM–2440–1 do not currently apply to municipal securities or exempt securities. This would be unchanged by the proposal.

[9] *Supra* note 5.

[10] First Commenter at 1.

[11] Second Commenter at 1.

[12] *Id.* at 4.

[13] *Id.* at 3.

[14] *Id.*

[15] *Id.*

[16] *Id.* at 4.

[17] NASD letter at 1, 4.

[18] *Id.* at 1–2.

[19] *Id.* at 2.

[20] *Id.* at 3.

[21] *Id.*

[22] *Id.*

[23] *Id.* at 4.

[24] *Id.* at 3–4.

[25] *Id.* at 4.

[26] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78o–3(b)(6).

[28] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57966; File No. SR–NYSE–2007–04]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to Approval of Fee for NYSE Real-Time Reference Prices

June 16, 2008.

### I. Introduction

On January 12, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a flat monthly fee for the receipt and use of real-time last sale prices of transactions that take place on the Exchange (''Last Sale Proposal''). The proposal was published for comment in the **Federal Register** on March 5, 2007.[3] On March 30, 2007, NYSE filed Amendment No. 1 to the Last Sale Proposal.[4] The Commission received six comment letters regarding the proposal.[5] On November 30, 2007, NYSE responded to the comment letters.[6] On June 11, 2008, NYSE filed Amendment No. 2 to the Last Sale Proposal. In Amendment No. 2, NYSE proposed to impose fees for the Last Sale Proposal only for a four-month pilot period beginning July 1, 2008.[7]

The Commission is publishing this notice to solicit comments on the proposed rule change as modified by Amendment Nos. 1 and 2 and is simultaneously approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

### II. Description of the Last Sale Proposal

The Exchange proposes to establish a four-month pilot program beginning on July 1, 2008, called NYSE Real-Time Reference Prices (''NYSE RTRP'')[8] that would allow vendors to receive and redistribute, on a real-time basis, last sale prices of transactions that take place on the Exchange (''NYSE Trade Prices'') and to establish a flat monthly fee for this service. The NYSE RTRP would only include pricing information for the securities transactions. The Exchange intends to make the NYSE RTRP available to internet service providers, traditional market data vendors, and others (''NYSE-Only Vendors''). The Exchange has represented that it would not permit any NYSE-Only Vendor to provide NYSE Trade Prices in a context in which a trading or order-routing decision can be implemented unless the NYSE-Only Vendor also provides consolidated displays of Network A last sale prices in accordance with Rule 603(c)(1) of Regulation NMS.

The Exchange proposes to establish a flat monthly fee of $100,000 for NYSE-Only Vendors to receive access to the NYSE RTRP data feed. The NYSE-Only Vendor may use that access to provide unlimited NYSE Trade Prices to an unlimited number of the NYSE-Only Vendor's subscribers and customers. The Exchange will not impose any device or end-user fee for the NYSE-Only Vendors' distribution of NYSE Trade Prices. The Exchange would also require the NYSE-Only Vendor to identify the NYSE trade price by placing the text ''NYSE Data'' in close proximity to the display of each NYSE Trade Price or series of NYSE Trade Prices.

The Exchange proposes to allow NYSE-Only Vendors to provide NYSE Trade Prices to their subscribers and customers without requiring the end-users to enter into contracts for the benefit of the Exchange. Instead, the Exchange will require NYSE-Only Vendors to provide a readily visible hyperlink that will send the end-user to a warning notice about the end-user's receipt and use of market data.

The Exchange also proposes to use the existing CTA and CQ Plan vendor contracts (''Network A Vendor Form'') to govern the distribution of the NYSE Trade Prices to the NYSE-Only Vendors. The Exchange proposes supplementing the Network A Vendor Form with an Exhibit C that would include terms that will govern such things as (i) the restriction against providing the service in the context of a trading or order-routing service, (ii) the replacement of end-user agreements with a hyperlink to a notice, (iii) the substance of the notice, and (iv) the ''NYSE Data'' labeling requirement. In addition, Exhibit C will specify that the NYSE-Only Vendor's authorization to provide the service will terminate at the expiration date of the pilot program unless the Exchange submits a proposed rule change to extend the program or to make it permanent and the Commission approves that proposed rule change. Lastly, Exhibit C would require NYSE-Only Vendors to share with the Exchange any research they may conduct regarding the pilot program or the results of their experience with the program and to consult with the Exchange regarding their views of NYSE RTRP.

### III. Discussion

The Commission finds that the proposed rule change, to be implemented on a four-month pilot basis, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, it is consistent with Section 6(b)(4) of the Act,[10] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55354 (February 26, 2007), 72 FR 9817 (''Notice'').

[4] In Amendment No. 1, the Exchange submitted a copy of the Exhibit C that the Exchange described in the Notice. As described below, the contractual terms of this Exhibit C would govern how vendors receive and redistribute the NYSE last sale market data.

[5] *See* letters from Alan Davidson, Senior Policy Counsel, Google Inc., to the Honorable Christopher Cox, Chairman, SEC, dated June 12, 2007 (''Google Letter''); Chuck Thompson, President, eSignal, to Nancy M. Morris, Secretary, SEC, dated March 27, 2007 (''eSignal Letter''); Gregory Babyak and Christopher Gilkerson, Co-Chairs of the Market Data Subcommittee of the Technology and Regulation Committee, the Securities Industry and Financial Markets Association (''SIFMA''), to Nancy M. Morris, Secretary, SEC, dated March 26, 2007 (''SIFMA Letter''); Scott Drake, Vice President, Digital Products, CNBC, to Nancy M. Morris, Secretary, SEC, dated February 16, 2007 (''CNBC Letter''); David Keith, Vice President, The Globe and Mail, to the Honorable Christopher Cox, Chairman, SEC, dated January 17, 2007 (''Globe and Mail Letter''); and Clem Chambers, CEO, ADVFN, to Nancy Morris, Secretary, SEC, dated January 16, 2007 (''ADVFN Letter'').

[6] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy M. Morris, Secretary, SEC, dated November 30, 2007.

[7] In Amendment No. 2, the Exchange removed language regarding syndication of the NYSE RTRP and stated that the Exchange may provide NYSE RTRP without charge upon Commission approval prior to July 1, 2008.

[8] In Amendment No. 2, the Exchange also changed the name of the service from NYSE Real-Time Trade Prices to NYSE Real-Time Reference Prices.

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(5).

not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,[12] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,[13] adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.[14]

The Commission received four comment letters expressing concern over the proposed rule change and two comment letters supporting the proposed rule change. Generally, SIFMA, Globe and Mail, eSignal, and ADVFN each suggested that NYSE did not adequately demonstrate that the proposed rule change was consistent with the Act.[15] SIFMA asserted that NYSE had failed to demonstrate that its proposal met the relevant requirements of the Act, including that its market data fees be fair and reasonable and not unreasonably discriminatory.[16] SIFMA, Globe and Mail, eSignal, and ADVFN each asserted that the NYSE proposal would unreasonably discriminate against smaller market data distributors.[17] Google and CNBC, however, expressed strong support for the proposal and noted their enthusiasm regarding the opportunity to give more of their users access to real-time financial information online.[18]

The Commission notes that NYSE amended the proposed rule change so that its fees would be imposed only for a four-month pilot period. On June 4, 2008, the Commission published for public comment a draft approval order that sets forth a market-based approach for analyzing proposals by self-regulatory organizations to impose fees for ''non-core'' market data products that would encompass the NYSE RTRP.[19] The Commission believes that NYSE's proposal is consistent with the Act for the reasons noted preliminarily in the Draft Approval Order. Pending review by the Commission of comments received on the Draft Approval Order, and final Commission action thereon, the Commission believes that approving NYSE's proposal on a pilot basis would be beneficial to investors and in the public interest, in that it should result in broad public dissemination of real-time pricing information. Therefore, the Commission is approving NYSE's proposed fees for a four-month pilot beginning July 1, 2008. The broader approach ultimately taken by the Commission with respect to non-core market data fees will necessarily guide Commission action regarding fees for the NYSE RTRP beyond the four-month pilot period.

The Commission finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto, before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. As noted above, accelerating approval of this proposal should benefit investors by facilitating their prompt access to widespread, free, real-time pricing information contained in the NYSE Trade Prices. In addition, the Commission notes that the proposal is approved only on a four-month pilot period while the Commission analyzes comments on the Draft Approval Order. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[20] to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2 to the Last Sale Proposal, including whether Amendment Nos. 1 and 2 to the Last Sale Proposal are consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSE–2007–04 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-NYSE–2007–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–04 and should be submitted on or before July 11, 2008.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–NYSE–2007–04), as modified by Amendment Nos. 1 and 2, be, and it hereby is, approved on an accelerated basis until October 31, 2008.

By the Commission.

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–13956 Filed 6–19–08; 8:45 am]

**BILLING CODE 8010–01–P**

[12] 15 U.S.C. 78f(b)(8).

[13] 17 CFR 242.603(a).

[14] NYSE is an exclusive processor of its last sale data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes data on an exclusive basis on its own behalf.

[15] *See* SIFMA Letter, Globe and Mail Letter, eSignal Letter and ADVFN Letter.

[16] *See* SIFMA Letter.

[17] *See* SIFMA Letter, Globe and Mail Letter, eSignal Letter and ADVFN Letter.

[18] *See* Google Letter and CNBC Letter.

[19] *See* Securities Exchange Act Release No. 57917 (June 4, 2008), 73 FR 32751 (June 10, 2008) (Notice of Proposed Order Approving Proposal by NYSE Arca, Inc. to Establish Fees for Certain Market Data and Request for Comment) (''Draft Approval Order'').

[20] 15 U.S.C. 78s(b)(2).

[21] 15 U.S.C. 78s(b)(2).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57958; File No. SR–NYSE Arca–2008–56]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change as Modified by Amendment No. 1 To Amend the Pilot Program for Initial and Continued Listing Standards, To Provide That Currently Traded Issuers Will Be Required To Meet Each of the $5 Closing Price Requirement and the $150 Million Market Value of Listed Securities Requirement on the Basis of a 90 Trading Day Average of the Closing Price of the Company's Common Stock Prior To Applying for Listing

June 12, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 28, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On June 5, 2008, the Exchange filed Amendment No. 1. The Commission is publishing this notice and order to solicit comments on the proposal, as modified by Amendment No. 1, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), proposes to amend the initial listing standard for common stock set forth in NYSE Arca Equities Rule 5.2(c) to provide that currently traded issuers will be required to meet each of the $5 closing price requirement and the $150 million market value of listed securities requirement on the basis of a 90 trading day average of the closing price of the company's stock prior to applying for listing. In addition, a company will not qualify for listing unless (i) the closing price of its common stock is at least $1 in each day of the 90 trading day period and (ii) the company's closing price exceeds $5 and its market value exceeds $150 market value at the time it applies for listing.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The NYSE Arca Equities initial listing standards for equity securities are approved on a pilot basis (''Pilot Program'').[3] Under the Pilot Program, Rule 5.2(c) requires that issuers wishing to list their common stock must have a $5 stock price and a market value of listed securities of $150 million at the time they apply to list. In the case of issuers whose stock is publicly traded immediately prior to listing on the Exchange, the rule currently requires that the issuer must maintain a closing price for its stock of $5 and a market value of listed securities of $150 million for 90 consecutive trading days prior to applying for listing. The Exchange proposes to amend these requirements as part of the Pilot Program, to provide that such issuers must demonstrate a $5 stock price and $150 million in market value of listed securities on the basis of a 90 trading day average of the closing price of the common stock prior to applying for listing. In addition, a company will not qualify for listing unless (i) the closing price of its common stock is at least $1 in each day of the 90 trading day period and (ii) the company's closing price exceeds $5 and its market value exceeds $150 market value at the time it applies for listing.

While this proposed amendment to the Pilot Program will allow an issuer to qualify for listing even though the closing price of its stock may be less than $5 or the market value of its listed securities may be less than $150 million for some days in the 90 trading day period, any such shortfalls will have to be offset by periods when the closing stock price exceeds $5 or the market value of listed securities exceeds $150 million by enough to enable the issuer to maintain the necessary average. As such, the Exchange believes that the amended methodology will continue to require companies to display on a sustained basis that they are of the appropriate size for listing on the Exchange.[4]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed amendment specifically seeks to remove impediments to and perfect the mechanisms of a free and open market by allowing NYSE Arca to compete with Nasdaq for listings of companies that may not currently be qualified to list on NYSE Arca, but would be qualified to list on the Nasdaq Global Market.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

[3] Rule 5.2(c) exists in its current form pursuant to a Pilot Program. The Commission initially approved the Pilot Program for six months, until May 29, 2007. *See* Securities Exchange Act Release No. 54796 (November 20, 2006), 71 FR 69166 (November 29, 2006) (SR–NYSEArca–2006–85). The Pilot Program was subsequently extended for an additional six months, until November 30, 2007. *See* Securities Exchange Act Release No. 55838 (May 31, 2007), 72 FR 31642 (June 7, 2007) (SR–NYSEArca–2007–51). The Pilot Program was extended for an additional six months, until May 31, 2008. *See* Securities Exchange Act Release No. 56885 (December 3, 2007), 72 FR 69272 (December 7, 2007) (SR–NYSEArca–2007–123). The Pilot Program was most recently extended for an additional six months, until November 30, 2008. *See* Securities Exchange Act Release No. 57922 (June 4, 2008), 73 FR 33137 (June 11, 2008) (SR–NYSEArca–2008–55). This filing is being submitted as an amendment to the Pilot Program.

[4] The Exchange notes that Nasdaq Global Market Standard 3 requires issuers whose stock is publicly traded immediately prior to listing to maintain a closing stock price of $5 and a market value of listed securities of $75 million for 90 consecutive trading days prior to applying for listing. While the proposed amendment may enable the Exchange to list issuers from time to time that would not meet its $5 closing stock price or market value requirements for 90 consecutive days, the Exchange notes that its market value of listed securities requirement is twice that of the comparable Nasdaq standard and that the Exchange requires a public float of $45 million, while the comparable Nasdaq standard requires a public float of only $20 million. As such, the Exchange believes that its standard as amended is still substantially more stringent than Nasdaq Global Market Standard 3.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–56 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–56. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–56 and should be submitted on or before July 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Florence E. Harmon,**

*Acting Secretary.*

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**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57975; File No. SR–NYSEArca–2008–62]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Listing and Trading of Shares of the First Trust ISE Global Wind Energy Index Fund

June 17, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 9, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. NYSE Arca filed the proposed rule change as a ''non-controversial'' proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

NYSE Arca proposes to list and trade shares (''Shares'') of the First Trust ISE Global Wind Energy Index Fund (''Fund''). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under NYSE Arca Equities Rule 5.2(j)(3), the Exchange's listing standards for Investment Company Units (''ICUs'').[5] The Fund seeks investment results that correspond generally to the price and yield (before the Fund's fees and expenses) of the ISE Global Wind Energy Index (''Index'' or ''Underlying Index''). The Index is developed and owned by the International Securities Exchange, LLC (''ISE''), in consultation with Standard & Poor's, a division of The McGraw-Hill Companies, Inc., which calculates and maintains the Index. The Index provides a benchmark for investors interested in tracking

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] An Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). See NYSE Arca Equities Rule 5.2(j)(3)(A).

public companies throughout the world that are active in the wind energy industry based on analysis of the products and services offered by those companies.

The Exchange is submitting this proposed rule change because the Underlying Index for the Fund does not meet all of the ''generic'' listing requirements of Commentary .01(a)(B) to NYSE Arca Equities Rule 5.2(j)(3) applicable to listing of ICUs based on international or global indexes. The Underlying Index meets all such requirements except for those set forth in Commentary .01(a)(B)(2).[6] Specifically, for the period December 2007 through May 2008, stocks comprising 86.15% of the Index weight each had a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares.

The Exchange represents that: (1) Except for Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Shares of the Fund currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to ICUs shall apply to the Shares; and (3) the Trust is required to comply with Commission Rule 10A–3 under the Act[7] for the initial and continued listing of the Shares. In addition, the Exchange represents that the Shares will comply with all other requirements applicable to ICUs including, but not limited to, requirements relating to the dissemination of key information such as the Index value and Intraday Indicative Value, the rules governing the trading of equity securities, trading hours, trading halts, surveillance, and the Information Bulletin to ETP Holders, as set forth in prior Commission orders approving the generic listing rules applicable to the listing and trading of ICUs.[8]

Detailed descriptions of the Fund, the Underlying Index, procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, risks, and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement[9] or on the Web site for the Fund (*http://www.ftportfolios.com*), as applicable.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange states that written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the Exchange can list and trade the Shares immediately. The Exchange states that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. The Exchange also believes that the proposal is non-controversial because, although the Underlying Index fails to meet the requirements set forth in Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3) by a small amount (3.85%), the Shares currently satisfy all of the other applicable generic listing standards under NYSE Arca Equities Rule 5.2(j)(3), and will be subject to all of the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to ICUs. Additionally, the Exchange represents that the Shares will comply with all other requirements applicable to ICUs.[14]

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[15] Given that the Shares comply with all of the NYSE Arca Equities generic listing standards for ICUs (except for narrowly missing the requirement relating to minimum worldwide monthly trading volume of the stocks composing 90% of the Index), the listing and trading of the Shares by NYSE Arca does not appear to present any novel or significant regulatory issues or impose any significant burden on competition. For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the

[6] Commentary .01(a)(B)(2) to Rule 5.2(j)(3) provides that the component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares.

[7] 17 CFR 240.10A–3.

[8] *See, e.g.*, Securities Exchange Act Release Nos. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR–NYSEArca–2006–86) (order approving generic listing standards for ICUs based on international or global indexes); 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14) (order approving generic listing standards for ICUs and Portfolio Depositary Receipts); and 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR–PCX–98–29) (order approving rules for listing and trading of ICUs).

[9] *See* the First Trust Registration Statement on Form N–1A, dated May 23, 2008 (File Nos. 333–143964; 811–21944) (''Registration Statement'').

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[14] *See supra* note 8 and accompanying text.

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2008–62 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–62 and should be submitted on or before July 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–13996 Filed 6–19–08; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### In the Matter of Certain Companies Quoted on the Pink Sheets: Greenstone Holdings, Inc.; Order of Suspension of Trading

June 18, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Greenstone Holdings, Inc. (''Greenstone'').

Greenstone is incorporated under the laws of Florida and has its primary headquarters in New York, New York. Questions have arisen regarding the adequacy and accuracy of press releases, financial statements, and statements on the company's Web site concerning the company's current financial condition, business and operations, and stock promoting activity.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in Greenstone's securities.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EDT on June 18, 2008, through 11:59 p.m. EDT, on July 1, 2008.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 08–1373 Filed 6–18–08; 10:51 am]

**BILLING CODE 8010–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11286 and #11287]**

### Indiana Disaster Number IN–00019

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Indiana (FEMA–1766–DR), dated 06/11/2008.

*Incident:* Severe Storms, Flooding, and Tornadoes.

*Incident Period:* 05/30/2008 and continuing.

**EFFECTIVE DATE:** 06/14/2008.

*Physical Loan Application Deadline Date:* 08/11/2008.

*EIDL Loan Application Deadline Date:* 03/11/2009.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the Presidential disaster declaration for the State of Indiana, dated 06/11/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):
Adams, Brown, Clay, Daviess, Dearborn, Greene, Hamilton, Henry, Jackson, Jennings, Knox, Owen, Parke, Putnam, Randolph, Rush, Shelby, Sullivan.

Contiguous Counties: (Economic Injury Loans Only):
Indiana: Allen, Clinton, Delaware, Dubois, Fayette, Franklin, Gibson, Jay, Jefferson, Martin, Montgomery, Ohio, Pike, Ripley, Scott, Tipton, Washington, Wayne, Wells.
Illinois: Crawford, Lawrence, Wabash.
Kentucky: Boone.
Ohio: Butler, Darke, Hamilton, Mercer, Van Wert.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E8–13969 Filed 6–19–08; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 11264 and # 11265]**

### Iowa Disaster Number IA–00015.

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 2.

**SUMMARY:** This is an amendment of the Presidential declaration of a major

[16] 17 CFR 200.30–3(a)(12).

disaster for the State of Iowa (FEMA–1763–DR), dated 05/27/2008.

*Incident:* Severe Storms, Tornadoes, and Flooding.

*Incident Period:* 05/25/2008 and continuing.

*Effective Date:* 06/15/2008.

*Physical Loan Application Deadline Date:* 07/28/2008.

*EIDL Loan Application Deadline Date:* 02/27/2009.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the Presidential disaster declaration for the State of Iowa, dated 05/27/2008 is hereby amended to include the following areas as adversely affected by the disaster:

*Primary Counties:* (Physical Damage and Economic Injury Loans):

Adams, Benton, Bremer, Cedar, Cerro Gordo, Delaware, Fayette, Floyd, Hardin, Johnson, Jones, Linn, Louisa, Marion, Muscatine, Page, Polk, Story, Tama, Union, and Winneshiek.

*Contiguous Counties:* (Economic Injury Loans Only):

Iowa: Adair, Allamakee, Boone, Cass, Clarke, Clinton, Dallas, Decatur, Des Moines, Dubuque, Fremont, Hamilton, Hancock, Henry, Howard, Iowa, Jackson, Jasper, Lucas, Madison, Mahaska, Marshall, Mills, Mitchell, Monroe, Montgomery, Poweshiek, Ringgold, Scott, Taylor, Warren, Washington, Winnebago, Worth, and Wright.

Illinois: Mercer and Rock Island.

Minnesota: Fillmore and Houston.

Missouri: Atchison and Nodaway.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E8–13970 Filed 6–19–08; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 11288 and # 11289]**

### Wisconsin Disaster # WI–00013

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA–1768–DR), dated 06/14/2008.

*Incident:* Severe Storms, Tornadoes, and Flooding.

*Incident Period:* 06/05/2008 and continuing.

**DATES:** *Effective Date:* 06/14/2008.

*Physical Loan Application Deadline Date:* 08/13/2008.

*Economic Injury (EIDL) Loan Application Deadline Date:* 03/13/2009.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 06/14/2008, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties (Physical Damage and Economic Injury Loans):*

Columbia, Crawford, Milwaukee, Sauk, Vernon

*Contiguous Counties (Economic Injury Loans Only):*

Wisconsin: Adams, Dane, Dodge, Grant, Green Lake, Iowa, Juneau, La Crosse, Marquette, Monroe, Ozaukee, Racine, Richland, Washington, Waukesha

Iowa: Allamakee, Clayton

Minnesota: Houston.

*The Interest Rates are:*

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners with Credit Available Elsewhere | 5.375 |
| Homeowners without Credit Available Elsewhere | 2.687 |
| Businesses with Credit Available Elsewhere | 8.000 |
| Other (Including Non-Profit Organizations) with Credit Available Elsewhere | 5.250 |
| Businesses And Non-Profit Organizations without Credit Available Elsewhere | 4.000 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 112886 and for economic injury is 112890.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E8–13965 Filed 6–19–08; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

**[PUBLIC NOTICE 6271]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Bernini and the Birth of Baroque Portrait Sculpture''

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects in the exhibition: ''Bernini and the Birth of Baroque Portrait Sculpture,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The J. Paul Getty Museum, Los Angeles, CA, from on or about August 5, 2008, until on or about October 26, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, telephone: (202–453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: June 13, 2008.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E8–14021 Filed 6–19–08; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

**[PUBLIC NOTICE 6272]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''The Dead Sea Scrolls''

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''The Dead Sea Scrolls'' to be displayed at The Jewish Museum, New York, New York, imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Jewish Museum, New York, New York, from on or about September 21, 2008, until on or about January 4, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: June 13, 2008.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E8–14020 Filed 6–19–08; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

**[Public Notice 6270]**

### Records of the Office of the Assistant Legal Adviser for International Claims and Investment Disputes

*Summary:* Notice is hereby given that the Department of State proposes to amend the Records of the Office of the Assistant Legal Adviser for International Claims and Investment Disputes pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 522a(r)), and Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on June 12, 2008.

It is proposed that the existing system will retain the name ''Records of the Office of the Assistant Legal Adviser for International Claims and Investment Disputes.'' It is also proposed that the amended system description will reflect the inclusion of names and addresses of witnesses to the claims processed by the Office of International Claims and Investment Disputes.

Any persons interested in commenting on this amendment of the Records of the Office of the Assistant Legal Adviser for International Claims and Investment Disputes may do so by submitting comments in writing to Margaret P. Grafeld, Director, Office of Information Programs and Services, A/ISS/IPS, U.S. Department of State, SA–2, Washington, DC 20522–8001.

This amendment to the Records of the Office of the Assistant Legal Adviser for International Claims and Investment Disputes will be effective 40 days from the date of publication, unless comments are received that result in a contrary determination.

The amendment will read as follows.

Dated: June 12, 2008.

**Rajkumar Chellaraj,**

*Assistant Secretary for the Bureau of Administration, Department of State.*

**STATE–54**

**SYSTEM NAME:**

Records of the Office of the Assistant Legal Adviser for International Claims and Investment Disputes.

**SECURITY CLASSIFICATION:**

Classified.

**SYSTEM LOCATIONS:**

Department of State, 2201 C Street, NW., Washington, DC 20520 and 2100 K Street, NW., Washington, DC 20037.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

U.S. nationals or residents, including businesses, with claims against foreign governments. Foreign nationals with claims against the United States. U.S. nationals or residents and foreign nationals who are witnesses or potential witnesses in these claims. U.S. citizens who have filed claims pursuant to 22 U.S.C. 1971, *et seq.* (''Fisherman's Protective Act''); 22 U.S.C. 2669(f) (''The Act of August 1956''); 28 U.S.C. 1346, 2671–80 (''The Federal Tort Claim Act''); 50 U.S.C. 1701 note.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Information relating to claims described above, including the names and addresses of parties and witnesses to the claims, the category and nature of the claims, their procedural history, correspondence, memoranda, and data which will enable U.S. Government attorneys to identify and process common legal issues in the claims.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

2 U.S.C. sec. 1971, et seq. (''Fisherman's Protective Act''); 22 U.S.C. 2669(f) (''The Act of August 1956''); 28 U.S.C. 1346, 2671–80 (''The Federal Tort Claim Act''); 50 U.S.C. 1701 note; 5 U.S.C. 301.

**PURPOSE:**

The Office of International Claims and Investment Disputes in the Office of the Legal Adviser will use this record system to organize information to facilitate processing claims made pursuant to the above-cited authorities.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

Certain information may be made available to other government agencies involved in the processing of the claim, principally the Departments of Justice, Treasury, Commerce, Defense and the Office of the United States Trade Representative, as well as relevant international tribunals and foreign governments. The information may also be released to other government agencies having statutory or other lawful authority to maintain such information. Also see ''Routine Uses'' listed in the Department of State Prefatory Statement published in the **Federal Register**.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Electronic media; hard copy.

**RETRIEVABILITY:**

By claim number or individual claimant or witness name; by nature or category of claim; by other descriptive features of the claim such as the country involved or applicable statute.

**SAFEGUARDS:**

All Department of State employees and contractors with authorized access, have undergone a thorough personnel security background investigation. All users are given information system security awareness training, including

the procedures for handling Sensitive But Unclassified (SBU) and personally identifiable information, before being allowed to access the Department of State SBU network. Annual refresher training is mandatory. Before being granted access to the system of records, a user must first be granted access to SBU network. Access is only granted to users with Diplomatic Security-approved clearances. Users must sign a Password Receipt Controls Form.

Access to the Department of State and its annexes is controlled by security guards, and admission is limited to those individuals possessing a valid identification card and individuals under proper escort. All records containing personal information are maintained in secured filing cabinets or in restricted areas, access to which is limited to authorized personnel. Access to electronic files is password-protected and under the direct supervision of the system manager. The system of records structures access privileges to reflect the separation of key duties that end-users perform within the functions the application supports. Access privileges are consistent with the need-to-know, separation of duties, and supervisory requirements established for manual processes. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular *ad hoc* monitoring of computer usage.

When it is determined that a user no longer needs access, the user account will be disabled.

**RETENTION AND DISPOSAL:**

These records will be maintained until they become inactive, at which time they will be retired or destroyed according to published record schedules of the Department of State and as approved by the National Archives and Records Administration. More specified information may be obtained by writing to the Director, Office of Information Programs and Services, A/ISS/IPS, SA–2, Department of State, Washington, DC 20522–8001.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant Legal Adviser for International Claims and Investment Disputes, Office of the Legal Adviser, 2430 E Street, NW., South Building, Room 203, Washington, DC 20037.

**NOTIFICATION PROCEDURE:**

Individuals who have reason to believe the Office of the Assistant Legal Adviser for International Claims and Investment Disputes might have records pertaining to them should write to the Director, Office of Information Programs and Services, A/ISS/IPS, SA–2, Department of State, Washington, DC 20522–8001. The individual must specify that he/she wishes the Records of the Office of the Assistant Legal Adviser for International Claims and Investment Disputes to be checked. At a minimum, the individual must include: Name, date and place of birth; current mailing address and zip code; and signature.

**RECORD ACCESS PROCEDURES:**

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director, Office of Information Programs and Services, A/ISS/IPS, SA–2, Department of State, Washington, DC 20522–8001.

**RECORD SOURCE CATEGORIES:**

These records contain information obtained directly from the individual who is the subject of these records or his/her legal representative, the parties to the claim at issue, other witnesses, other departments of the executive branch, the U.S.-Iran Claims Tribunal, the United Nations Compensation Commission, other international tribunals, and the Office of the Legal Adviser.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Portions of certain documents contained within this system of records are exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I) and (f). See 22 CFR 171.32.

[FR Doc. E8–14022 Filed 6–19–08; 8:45 am]

**BILLING CODE 4710–24–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending April 18, 2008

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* DOT–OST–1999–6345.

*Date Filed:* April 14, 2008.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 5, 2008.

*Description:* Application of United Parcel Service Co. (''UPS'') requesting renewal of its certificate authorizing UPS to engage in the scheduled foreign air transportation of property and mail between Miami, Florida and Los Angeles, California; via intermediate points in Colombia, Ecuador, and Panama; and the coterminal points Manaus, Brasilia, Rio de Janeiro, Sao Paulo, Recife, Porto Alegre, Belem, Belo Horizonte, and Salvador, Brazil.

*Docket Number:* DOT–OST–2008–0140.

*Date Filed:* April 16, 2008.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 7, 2008.

*Description:* Application of Qantas Airways Limited (''Qantas'') requesting an amendment of its foreign air carrier permit in order to engage in scheduled foreign air transportation of persons, property and mail between the United States and Australia to the full extent authorized by the new Air Transport Services Agreement between the United States and Australia, to which the United States and Australia reached a referendum agreement on February 14, 2008. Qantas also requests an exemption to the extent necessary to enable it to provide the service authorized by the new Agreement pending issuance of its amended foreign air carrier permit. Qantas seeks permit and interim exemption authority to engage in: (i) Foreign scheduled and charter air transportation of persons, property and mail from points behind Australia via Australia and intermediate points to a point or points in the United States and beyond; (ii) foreign scheduled and charter transportation of property between any point or points in the United States and any other point or points; (iii) other charters pursuant to prior approval.

*Docket Number:* DOT–OST–2008–0142.

*Date Filed:* April 18, 2008.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 9, 2008.

*Description:* Application of Air Jamaica Limited (''Air Jamaica'') requesting an amended foreign air carrier permit authorizing it to engage in (i) scheduled foreign air transportation of persons, property and mail from

points behind Jamaica via Jamaica and intermediate points to a point or points in the United States and beyond; (ii) charter foreign air transportation of persons, property and mail between any point or points in Jamaica and any point or points in the United States; (iii) charter foreign air transportation of persons, property and mail between any point or points in the United States and any point or points in a third country or countries, provided that, except with respect to cargo charters, such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to Jamaica for the purpose of carrying local traffic between Jamaica and the United States; (iv) other charters pursuant to the prior approval requirement; and (v) transportation authorized by any additional route rights made available to Jamaican carriers in the future, provided that Air Jamaica has furnished the Department with evidence that it holds a homeland license for that new service before its commencement.

*Docket Number:* DOT–OST–2008–0144.

*Date Filed:* April 18, 2008.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 9, 2008.

*Description:* Application of Futura Gael requesting issuance of a foreign air carrier permit to the full extent authorized by the Air Transport Agreement between the United States and the European Community and the Member States of the European Community to enable it to engage in: (i) Foreign scheduled and charter air transportation of persons, property and mail from any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (ii) foreign scheduled and charter air transportation of persons, property and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (iii) foreign scheduled and charter cargo air transportation between any point or points in the United States and any other point or points; (iv) other charters pursuant to the prior approval requirements; and (v) transportation authorized by any additional route rights made available to European Community carriers in the future. Futura Gael also requests a corresponding exemption to the extent necessary to enable it to provide the services described above pending issuance of its foreign air carrier permit and such additional or other relief.

*Docket Number:* DOT–OST–2008–0147.

*Date Filed:* April 18, 2008.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 9, 2008.

*Description:* Application of Futura International Airway, S.A. (''Futura'') requesting issuance of a foreign air carrier permit to the full extent authorized by the Air Transport Agreement between the United States and the European Community and the Member States of the European Community to enable it to engage in: (i) Foreign scheduled and charter air transportation of persons, property and mail from any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (ii) foreign scheduled and charter air transportation of persons, property and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (iii) foreign scheduled and charter cargo air transportation between any point or points in the United States and any other point or points; (iv) other charters pursuant to the prior approval requirements; and (v) transportation authorized by any additional route rights made available to European Community carriers in the future. Futura also requests a corresponding exemption to the extent necessary to enable it to provide the services described above pending issuance of its foreign air carrier permit and such additional or other relief.

**Renee V. Wright,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. E8–13984 Filed 6–19–08; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending April 25, 2008

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* DOT–OST–2008–0148.

*Date Filed:* April 21, 2008.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 12, 2008.

*Description:* Application of Thomas Cook Airlines Limited (Thomas Cook) requesting an amended foreign air carrier permit and an exemption authority, so that Thomas Cook can engage in: (a) Foreign scheduled and charter air transportation of persons and property from any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (b) foreign scheduled and charter air transportation of persons and property between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (c) foreign scheduled and charter cargo air transportation between any point or points in the United States and any other point or points; (d) other charters pursuant to the prior approval; and (e) transportation authorized by any additional route rights made available to European Community carriers in the future.

*Docket Number:* DOT–OST–1997–3006.

*Date Filed:* April 22, 2008.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 13, 2008.

*Description:* Application of Finnair Oyj (''Finnair'') requesting renewal of its exemption and to amend it to encompass all of the new rights made available to European air carriers and a foreign air carrier permit to enable it to provide: (a) Foreign scheduled and nonscheduled air transportation of persons, property and mail from any point or points behind any Member State of the European Union, via any point or points in any Member State and via intermediate points, to any point or points in the United States and beyond; (b) foreign scheduled and nonscheduled air transportation of persons, property and mail between any point or points in the United States and any point or points in any member of the European

Common Aviation Area; (c) foreign scheduled and nonscheduled cargo air transportation between any point or points in the United States and any other point or points; (d) other charters pursuant to the prior approval; and (e) transportation authorized by any additional route rights made available to European Community carriers in the future.

*Docket Number:* DOT–OST–2008–0149.

*Date Filed:* April 23, 2008.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 14, 2008.

*Description:* Application of Corporate Jets XXI, S.A. (''CorporatejetsXXI'') requesting a foreign air carrier permit and exemption to engage in: (a) Foreign charter air transportation of persons, property and mail from any point or points behind any Member State of the European Union, via any point or points in any EU Member State and via intermediate points, to any point or points in the United States and beyond; (b) foreign charter air transportation of persons, property and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (c) foreign charter air transportation of cargo between any point or points in the United States and any other point or points; (d) other charters pursuant to prior approval; and (e) charter transportation authorized by any additional route rights made available to European Community carriers in the future, to the extent permitted by CorporatejetsXXI's homeland license on file with the Department.

*Docket Number:* DOT–OST–2008–0150.

*Date Filed:* April 25, 2008.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 16, 2008.

*Description:* Application of JetNetherlands B.V. requesting a foreign air carrier permit to the full extent authorized by the Air Transport Agreement between the United States and the European Community and the Member States of the European Community to enable it to engage in: (i) Foreign charter air transportation of persons and property from any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (ii) foreign charter air transportation of persons and property between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (iii) other charters pursuant to the prior approval requirements; and (iv) transportation authorized by any additional route rights made available to European Community carriers in the future.

**Renee V. Wright,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. E8–13985 Filed 6–19–08; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending May 2, 2008

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier

Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* DOT–OST–2008–0152.

*Date Filed:* April 28, 2008.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 19, 2008.

*Description:* Application of VIM Airlines requesting a foreign air carrier permit to engage in charter transportation of passengers, property and mail between a point or points in the Russian Federation and a point or points in the United States; as well as in other charter air transportation operations.

**Renee V. Wright,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. E8–13991 Filed 6–19–08; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending May 9, 2008

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* DOT–OST–2008–0154.

*Date Filed:* May 5, 2008.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 27, 2008.

*Description:* Application of Air Greco, Inc. d/b/a Wings Air requesting authority to conduct scheduled passenger operations as a commuter air carrier.

*Docket Number:* DOT–OST–2008–0158.

*Date Filed:* May 6, 2008.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 27, 2008.

*Description:* Joint Application of Aloha Airlines, Inc. (''AAI'') and Aeko Kula, Inc. d/b/a Aloha Air Cargo (''AKI'') requesting that the Department transfer AAI's certificate of public convenience and necessity (and certain other exemption authority) to AKI.

*Docket Number:* DOT–OST–2008–0127.

*Date Filed:* May 9, 2008.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 30, 2008.

*Description:* Application of Tradewinds Airlines, Inc. (''Tradewinds'') requesting (1) issuance of a certificate of public convenience and necessity authorizing it to provide scheduled foreign air transportation of property and mail between a point or points in the United States and a point in the People's Republic of China, via intermediate points, and beyond China to any point or points; (2) designation as the additional one (1) U.S. flag all-cargo

carrier permitted by the MOC; and (2) allocation of six (6) of the fifteen (15) weekly frequencies that become available March 25, 2009.

*Docket Number:* DOT–OST–2008–0127.

*Date Filed:* May 9, 2008.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 30, 2008.

*Description:* Application of Evergreen International Airlines, Inc. requesting a certificate of public convenience and necessity, a designation, and the allocation of six all-cargo frequencies to allow it to inaugurate scheduled all-cargo service to China on March 25, 2009.

**Renee V. Wright,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. E8–13993 Filed 6–19–08; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings, Agreements Filed the Week Ending May 2, 2008

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* DOT–OST–2008–0151.

*Date Filed:* April 28, 2008.

*Parties:* Members of the International Air Transport Association.

*Subject:*

Mail Vote 565.
TC3 South West Pacific-South Asian Subcontinent
Passenger Adopting/Revalidating Resolution
(Memo 1191)
Mail Vote 565
TC3 South West Pacific-South East Asia
Passenger Adopting/Revalidating Resolution
(Memo 1192)
Mail Vote 565
South West Pacific-Japan, Korea (except to/from Japan) (except Korea (Rep. of)-American Samoa)
Passenger Adopting/Revalidating Resolution
(Memo 1193)
Intended effective date: 1 June 2008.

**Renee V. Wright,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. E8–13988 Filed 6–19–08; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings, Agreements Filed the Week Ending May 9, 2008

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1383 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* DOT–OST–2008–0160.

*Date Filed:* May 9, 2008.

*Parties:* Members of the International Air Transport Association.

*Subject:*

Mail Vote 567—Resolution 010z.
TC3 Japan, Korea-South East Asia, Within South East Asia
Special Passenger Amending Resolution between Hong Kong SAR and Japan, between China (excluding Hong Kong SAR and Macao SAR) and Russia (in Asia)
(Memo 1197)
Intended effective date: 15 May 2008.

**Renee V. Wright,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. E8–13994 Filed 6–19–08; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No. FAA–2008–0608]**

### Hawaii Air Tour Common Procedures Manual, FAA AWP13–136A

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of and requests comments on the proposed draft for the Hawaii Air Tour Common Procedures Manual, draft AWP13–136A.

**DATES:** We must receive your comments by July 21, 2008.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2008–0608 using the following method:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

**FOR FURTHER INFORMATION CONTACT:** For technical questions regarding the Hawaii Air Tour Common Procedures Manual, contact: Edwin D. Miller, Air Transportation Division, 135 Air Carrier Operations Branch, AFS–250, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8166; e-mail *edwin.miller@faa.gov.* For legal questions concerning this rulemaking, contact: Paul G. Greer, FAA Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–7930; e-mail *paul.g.greer@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite interested people to comment on the proposed Hawaii Air Tour Common Procedures Manual by sending written data, views, or arguments. You should include the Federal docket number FAA–2008–0680 in your comments. We will consider all communications received by the closing date for comments.

**Availability of Document**

The proposed Hawaii Air Tour Common Procedures Manual, Operations Specifications B048 (Air Tour Operations Below 1,500 feet AGL in the State of Hawaii), and Letter of Authorization B048 (Air Tour Operations Below 1,500 feet AGL in the State of Hawaii), can be found and downloaded from the Internet at the following sites:

- *FAA Web site:* Go to *http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/afs/afs200/branches/afs250/media/HawaiiCPM.pdf.*

- *Federal eRulemaking Portal Web:* Go to *http://www.regulations.gov* and search for the document using the Federal docket number FAA–2008–0680.

Since the manual is so large, the FAA will not be able to provide a paper copy upon request. The electronic version of this document consists of a total of nine (9) files: The manual (1 file); the islands of operations (6 files); Operations Specification (1 file); and the LOA (1 file). Some files are in Adobe PDF format, and two files are in Microsoft Word format. Please note that the Word files are very large and may take a few minutes to download.

**Discussion**

The proposed Hawaii Air Tour Common Procedures Manual supports the operational guidance for all commercial air tour operators authorized to conduct operations below 1,500′ above the ground level (AGL) within the state of Hawaii. Authorized part 91 and part 135 operators will be required to comply with the requirements and limitations set forth in this manual when it is adopted. Prior to conducting commercial air tour operations below 1,500′ AGL, pilots must receive operator specific training as outlined in the common procedures manual for part 91 and 135 air tour operators in the State of Hawaii. The common procedures manual covers a variety of training requirements and operational requirements, including air tour operations below 1,500′ AGL, recurrent flight training, visibility restrictions, map legend and definitions, radio communications procedures, Weather Enhanced Safety Areas (WESA), site specific and enroute operations. It also includes detailed maps and photos, and over water specific procedures for every island in the state of Hawaii.

Issued in Washington, DC, on June 17, 2008.

**Gary Davis,**

*Air Transportation Division, Acting Manager of AFS–200.*

[FR Doc. E8–14014 Filed 6–19–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### Availability of Supporting Materials

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Availability of supporting materials.

**SUMMARY:** This notice advises the public of the availability on the Department of Transportation (Department) Web site of revised guidance and an accompanying advisory policy memorandum concerning the value of a statistical life used by Departmental analysts when assessing the benefits of preventing fatalities. Consistent with the revised guidance and Departmental policy, the adjusted value of a statistical life will be assessed in conducting economic analyses and identifying the benefits of FMCSA regulatory initiatives in all open rulemaking dockets.

**SUPPLEMENTARY INFORMATION:** On February 5, 2008, the Department issued revised guidance concerning ''Treatment of the Value of Preventing Fatalities and Injuries in Preparing Economic Analyses.'' Based on an improved understanding of relevant academic research literature, the revised guidance provides that the best present estimate of the economic value of preventing a human fatality is $5.8 million. In an advisory memorandum issued concurrently with the revised guidance to Secretarial Officers and Modal Administrators, Assistant Secretary for Transportation Policy Tyler Duval and General Counsel D.J. Gribbin instructed that the newly adjusted $5.8 million human life value should be used, effective immediately, for analyses performed by the Department. In addition, the memorandum announced that the Department will, for the first time, require supplementary analyses at values for a statistical life higher and lower than the $5.8 million adjusted value—specifically, assumptions of $3.2 million and $8.4 million for the value associated with each life saved.

Consistent with the revised Departmental guidance, FMCSA has reassessed the regulatory analyses in open rulemaking dockets to take account of the adjusted human life value. The revised guidance raising the economic value of preventing a human fatality and the accompanying policy memorandum may be found on the DOT Web site at: *http://ostpxweb.ost.dot.gov/policy/reports/080205.htm.*

Issued on: June 12, 2008.

**John H. Hill,**

*Administrator.*

[FR Doc. E8–14008 Filed 6–19–08; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket ID FMCSA–2008–0106]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemptions; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 68 individuals for exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

**DATES:** Comments must be received on or before July 21, 2008.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2008–0106 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://Docketsinfo.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001.

Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 68 individuals listed in this notice each have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

**Qualifications of Applicants**

*Ronald G. Adams*

Mr. Adams, age 58, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/60 and in the left, 20/20. Following an examination in 2008, his optometrist noted, ''In my professional opinion, Mr. Adams has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Adams reported that he has driven straight trucks for 17 years, accumulating 204,000 miles, and tractor-trailer combinations for 4 years, accumulating 120,000 miles. He holds a Class A Commercial Driver's License (CDL) from West Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Catarino Aispuro*

Mr. Aispuro, 39, has a prosthetic left eye due to a traumatic injury sustained 18 years ago. The visual acuity in his right eye is 20/20. Following an examination in 2008, his optometrist noted, ''Catarino's vision is sufficient to perform the driving tasks necessary to operate a commercial vehicle.'' Mr. Aispuro reported that he has driven straight trucks for 11 years, accumulating 440,000 miles. He holds a Class B CDL from Oregon. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Edwin A. Betz*

Mr. Betz, 58, has complete loss of vision in his left eye due to a traumatic injury sustained in 1988. The visual acuity in his right eye is 20/20. Following an examination in 2008, his optometrist noted, ''I certify in my medical opinion that Mr. Betz has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Betz reported that he has driven straight trucks for 35 years, accumulating 140,000 miles, and tractor-trailer combinations 15 years, accumulating 90,000 miles. He holds a Class A CDL from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*James F. Brumberg*

Mr. Brumberg, 57, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/200. Following an examination in 2008, his optometrist noted, ''In my medical opinion, the above patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle''. Mr. Brumberg reported that he has driven straight trucks for 7 years, accumulating 302,400 miles, tractor-trailer combinations for 25 years, accumulating 3.4 million miles, and buses for 3 years, accumulating 129,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 13 mph.

*Donald L. Carman*

Mr. Carman, 59, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/200 and in the left, 20/15. Following an examination in 2008, his optometrist noted, ''It is my opinion, based on my recent examination of Mr. Carman, that if he has demonstrated a history of satisfactory commercial vehicle operation, he should be able to continue doing so with corrective lenses.'' Mr. Carman reported that he has driven straight trucks for 3 years, accumulating 15,000 miles, and tractor-trailer combinations for 33 years, accumulating 3.3 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*John W. Carter, Jr.*

Mr. Carter, 60, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/70 and in the left, 20/20. Following an examination in 2008, his optometrist noted, ''He has sufficient vision to operate commercial vehicles.'' Mr. Carter reported that he has driven straight trucks for 3 years, accumulating 45,000 miles, and tractor-trailer combinations for 3 years, accumulating 240,000 miles. He holds a Class C operator's license from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Christopher R. Cone*

Mr. Cone, 41, has had posterior staphyloma in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/400. Following an examination in 2007, his optometrist noted, ''There is no reason that Mr. Cone would not be able to visually see what he needs to see and operate a commercial vehicle.'' Mr. Cone reported that he has driven straight trucks for 8 years, accumulating 640,000 miles, and tractor-trailer combinations for 2 years, accumulating 120,000 miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Walter O. Connelly*

Mr. Connelly, 39, has had lateral nystagmus since childhood. The best corrected visual acuity in his right eye is 20/50 and in the left, 20/25. Following an examination in 2007, his optometrist noted, ''Mr. Connelly has sufficient vision to be able to operate a commercial vehicle.'' Mr. Connelly reported that he has driven straight trucks for 6 months, accumulating 3,600 miles, and tractor-trailer combinations for 13 years, accumulating 110,500 miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Stephen B. Copeland*

Mr. Copeland, 43, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20 and in the left, 20/200. Following an examination in 2007, his optometrist noted, ''In my professional opinion, I believe that Mr. Copeland does have the visual ability to adequately and safely operate a tractor trailer truck.'' Mr. Copeland reported that he has driven straight trucks for 21 years, accumulating 210,000 miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Gerald L. Culverwell*

Mr. Culverwell, 64, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, light perception. Following an examination in 2008, his optometrist noted, ''He has sufficient vision to operate a commercial vehicle, including buses.'' Mr. Culverwell reported that he has driven straight trucks for 26 years, accumulating 520,000 miles, tractor-trailer combinations for 48 years, accumulating 1.9 million miles, and buses for 12 years, accumulating 240,000 miles. He holds a Class A CDL from Colorado. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 12 mph.

*Armando P. D'Angeli*

Mr. D'Angeli, 54, has a prosthetic left eye due to a traumatic injury that he sustained as a child. The best corrected visual acuity in his right eye is 20/15. Following an examination in 2008, his ophthalmologist noted, ''I believe that Armando D'Angeli has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. D'Angeli reported that he has driven straight trucks for 35 years, accumulating 350,000 miles. He holds a Class A Commercial Driver's License (CDL) from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Stephen R. Daugherty*

Mr. Daugherty, 52, has had optic nerve atrophy in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in the left, light perception. Following an examination in 2007, his ophthalmologist noted, ''I do certify in my medical opinion that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Daugherty reported that he has driven straight trucks for 35 years, accumulating 1.9 million miles, and tractor-trailer combinations for 30 years, accumulating 1.7 million miles. He holds a Class A CDL from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Donald R. Davis*

Mr. Davis, 50, has complete loss of vision in his right eye due to a cataract surgery with subsequent retinal detachment that occurred when he was a child. The best corrected visual acuity in his left eye is 20/25. Following an examination in 2008, his optometrist noted, ''I feel that given the long-standing history of blindness in the right eye and the extensive experience Mr. Davis has had in the commercial trucking business, he is able to perform his duties as a commercial truck driver and drive on public highways.'' Mr. Davis reported that he has driven straight trucks for 10 years, accumulating 100,000 miles, tractor-trailer combinations for 5 years, accumulating 225,000 miles, and buses for 1 year, accumulating 1,000 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Louis A. DiPasqua, Jr.*

Mr. DiPasqua, 54, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/200. Following an examination in 2008, his ophthalmologist noted, ''In my medical opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. DiPasqua reported that he has driven tractor-trailer combinations for 7½ years, accumulating 600,000 miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Henry L. Donivan*

Mr. Donivan, 47, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20 and in the left, 20/100. Following an examination in 2007, his ophthalmologist noted, ''In my opinion, I do feel he has sufficient vision to operate a commercial vehicle safely with extra care.'' Mr. Donivan reported that he has driven tractor-trailer combinations for 13 years, accumulating 1.2 million miles. He holds a Class A CDL from West Virginia. His driving record for the last 3 years shows one crash and no convictions for moving violations in a CMV.

*Randy J. Doran*

Mr. Doran, 53, has a prosthetic right eye due to a traumatic injury that he sustained as a child. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2008, his ophthalmologist noted, ''In my medical opinion, Randy Doran has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Doran reported that he has driven straight trucks for 35 years, accumulating 1.1 million miles, and tractor-trailer combinations for 29 years, accumulating 2.9 million miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 12 mph.

*Robert E. Dukes*

Mr. Dukes, 61, has an eccentric pupil and exotropia in his right eye due to a traumatic accident sustained at age 18. The best corrected visual acuity in his right eye is 20/400 and in the left, 20/20. Following an examination in 2008, his optometrist noted, ''In my opinion, there have been no major changes in last forty three years that would make Mr. Dukes less able to perform vision to the driving tasks to drive commercial vehicles, present vision is stable and adequate.'' Mr. Dukes reported that he has driven tractor-trailer combinations for 17 years, accumulating 1.5 million miles. He holds a Class A CDL from Mississippi. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Roger D. Elders*

Mr. Elders, 56, has had optic nerve hypoplasia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/400. Following an examination in 2007, his ophthalmologist noted, ''In my opinion, Roger has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Elders reported that he has driven straight trucks for 18 years, accumulating 90,000 miles, and tractor-trailer combinations for 18 years, accumulating 900,000 miles. He holds a Class A CDL from Michigan. His driving record for the last 3 years shows one crash and no convictions for moving violations in a CMV.

*Robert E. Engel*

Mr. Engel, 66, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/70. Following an examination in 2008, his optometrist noted, ''It is my medical opinion that Mr. Engel's vision is more than sufficient to perform the driving tasks required to operate a commercial vehicle.'' Mr. Engel reported that he has driven straight trucks for 35 years, accumulating 875,000 miles, and tractor-trailer combinations for 6 years, accumulating 120,000 miles. He holds a Class A CDL from California. His driving record for the last 3 years shows two crashes, for which he was not cited, and no convictions for moving violations in a CMV.

*James F. Epperson*

Mr. Epperson, 52, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/70. Following an examination in 2007, his optometrist noted, ''In my opinion, has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Epperson reported that he has driven tractor-trailer combinations for 26 years, accumulating 2.9 million miles. He holds a Class A CDL from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*James H. Facemyre*

Mr. Facemyre, 54, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''In my professional opinion, Mr. Facemyre has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Facemyre reported that he has driven tractor-trailer combinations for 22 years, accumulating 2.8 million miles. He holds a Class A CDL from West Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Gregory L. Farrar*

Mr. Farrar, 55, has loss of vision in his right eye due to a traumatic injury sustained in 1995. The best corrected visual acuity in his right eye is 20/400 and in the left, 20/20. Following an examination in 2008, his ophthalmologist noted, ''I believe Mr. Farrar has sufficient vision to operate a commercial vehicle.'' Mr. Farrar reported that he has driven straight trucks for 35 years, accumulating 7,000 miles, and tractor-trailer combinations for 34 years, accumulating 4.4 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

*Riche Ford*

Mr. Ford, 44, has had a macular scar in his right eye since birth. The best corrected visual acuity in his right eye is count-finger vision and in the left, 20/20. Following an examination in 2007, his ophthalmologist noted, ''I certify, in my medical opinion, that this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Ford reported that he has driven tractor-trailer combinations for 13 years, accumulating 1.6 million miles. He holds a Class A CDL from Colorado. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Kevin K. Friedel*

Mr. Friedel, 31, has a prosthetic left eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is 20/15. Following an examination in 2008, his ophthalmologist noted, ''It is my opinion that Kevin Friedel has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Friedel reported that he has driven straight trucks for 13 years, accumulating 65,000 miles. He holds a Class D operator's license from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Eric M. Giddens, Sr.*

Mr. Giddens, 39, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/100 and in the left, 20/15. Following an examination in 2008, his optometrist noted, ''It is my conclusion that according to Mr. Gidden's previous driving record and his performance during all the testing he has undergone, that he has the visual ability required to operate a commercial vehicle.'' Mr. Giddens reported that he has driven straight trucks for 21 years, accumulating 315,000 miles, and tractor-trailer combinations for 16 years, accumulating 1.6 million miles. He holds a Class A CDL from Delaware. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Paul W. Goebel, Jr.*

Mr. Goebel, 44, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/100. Following an examination in 2007, his optometrist noted, ''In my opinion, Mr. Goebel has sufficient vision required to operate a commercial vehicle.'' Mr. Goebel reported that he has driven straight trucks for 7 years, accumulating 175,000 miles. He holds a Class B CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Edward J. Grant*

Mr. Grant, 58, has had dense leukoma of the central cornea in his left eye due to a traumatic injury sustained in 1973. The visual acuity in his right eye is 20/20 and in the left, light perception. Following an examination in 2008, his optometrist noted, ''In my opinion, Mr. Grant has sufficient vision to perform the driving tasks required to operate a commercial vehicle even though his left eye does not meet the minimum visual acuity requirements.'' Mr. Grant reported that he has driven straight trucks for 6 years, accumulating 12,000 miles, and tractor-trailer combinations for 25 years, accumulating 2 million miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows one crash, for which he was cited, and no convictions for moving violations in a CMV.

*Jeffery M. Hall*

Mr. Hall, 45, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/400 and in the left, 20/20. Following an examination in 2008, his optometrist noted, ''Therefore, I feel Mr. Hall has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Hall reported that he has driven straight trucks for 5 years, accumulating 200,000 miles, and tractor-trailer combinations for 18 years, accumulating 1.8 million miles. He holds a Class A CDL from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Ronnie L. Hanback*

Mr. Hanback, 50, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/80. Following an examination in 2008, his optometrist noted, ''In my opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Hanback reported that he has driven straight trucks for 5 years, accumulating 50,000 miles, and tractor-trailer combinations for 25 years, accumulating 812,500 miles. He holds a Class A CDL from Alabama.

His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Steven G. Harter*

Mr. Harter, 41, has a prosthetic left eye due to a traumatic injury sustained in 2003. The visual acuity in his right eye is 20/20. Following an examination in 2008, his optometrist noted, ''In my medical opinion, Mr. Steven Harter has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Harter reported that he has driven tractor-trailer combinations for

14 years, accumulating 1.1 million miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Michael C. Hensley*

Mr. Hensley, 56, has loss of vision in his right eye due to a retinal detachment sustained in 1995. The best corrected visual acuity in his right eye is 20/80 and in the left, 20/20. Following an examination in 2008, his optometrist noted, ''I certify that in my medical opinion, Michael Hensley has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Hensley reported that he has driven straight trucks for 22 years, accumulating 1.4 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*George F. Hernandez, Jr.*

Mr. Hernandez, 48, has had complete loss of vision in his left eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2008, his ophthalmologist noted, ''Mr. Hernandez has sufficient vision to perform the driving tasks necessary to operate a commercial vehicle.'' Mr. Hernandez reported that he has driven straight trucks for 1 year, accumulating 50,000 miles, and tractor-trailer combinations for 15 years, accumulating 825,000 miles. He holds a Class A CDL from Arizona. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Scott A. Hillman*

Mr. Hillman, 50, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/70. Following an examination in 2008, his ophthalmologist noted, ''He has sufficient vision to perform the driving tasks necessary to drive a commercial vehicle.'' Mr. Hillman reported that he has driven straight trucks for 4 years, accumulating 40,000 miles, and tractor-trailer combinations for 4 years, accumulating 40,000 miles. He holds a Class A CDL from Pennsylvania.

His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Charles S. Huffman*

Mr. Huffman, 50, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is count-finger vision and in the left, 20/15. Following an examination in 2007, his ophthalmologist noted, ''I also find that because your side vision is excellent in both eyes and that your central vision is excellent in the left eye, you will likely have no difficulty performing your job as a commercial truck driver.'' Mr. Huffman reported that he has driven straight trucks for 3 years, accumulating 150,000 miles, and tractor-trailer combinations for 6 years, accumulating 360,000 miles. He holds a Class A CDL from Kansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Lance G. James*

Mr. James, 54, has loss of vision in his right eye due to traumatic injury sustained in 1961. The visual acuity in his right eye is light perception and in the left, 20/20. Following an examination in 2008, his ophthalmologist noted, ''In my medical opinion. Mr. James has sufficient and stable vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. James reported that he has driven straight trucks for 35 years, accumulating 2.5 million miles, and tractor-trailer combinations for 13 years, accumulating 390,000 miles. He holds a Class A CDL from Wisconsin. His driving record for the last 3 years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

*Jesse P. Jamison*

Mr. Jamison, 37, has loss of vision in his right eye due to trauma sustained as a child. The visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''Patient has been concluded to have sufficient vision to drive commercial vehicles.'' Mr. Jamison reported that he has driven straight trucks for 10 years, accumulating 520,000 miles. He holds a Class D operator's license from Tennessee. His driving record for the last 3 years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

*James A. Jones*

Mr. Jones, 52, has a macular hole in his left eye since childhood. The visual acuity in his right eye is 20/20 and in the left, 20/200. Following an examination in 2007, his optometrist noted, ''In my medical opinion, Mr. Jones has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Jones reported that he has driven straight trucks for 12 years, accumulating 120,000 miles. He holds a Class C operator's license from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Ronnie M. Jones*

Mr. Jones, 55, has had amblyopia since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/200. Following an examination in 2008, his optometrist noted, ''In my medical opinion, I would pass this patient to operate a commercial vehicle.'' Mr. Jones reported that he has driven straight trucks for 13 years, accumulating 650,000 miles, and tractor-trailer combinations for 18 years, accumulating 1.1 million miles. He holds a Class A CDL from Idaho. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Andrew C. Kelly*

Mr. Kelly, 43, has complete loss of vision in his right eye due to a traumatic injury sustained 7 years ago. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2007, his optometrist noted, ''In my medical opinion, I certify that Andrew Kelly has sufficient vision to perform the driving tasks required to operate a commercial vehicle as he has done in the past.'' Mr. Kelly reported that he has driven tractor-trailer combinations for 15 years, accumulating 375,000 miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV, impeding traffic.

*Jason W. King*

Mr. King, 38, has complete loss of vision in his left eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2008, his optometrist noted, ''Jason's vision has been stable since 1977. He has been driving for over 20 years without any problems and has sufficient vision to perform all driving tasks required to operate a commercial vehicle.'' Mr. King reported that he has driven straight trucks for 10 years, accumulating 100,000 miles, and tractor-trailer combinations for 6 years, accumulating 30,000 miles. He holds a Class A CDL from Montana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Leslie A. Landschoot*

Mr. Landschoot, 46, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/400. Following an examination in 2007, his optometrist noted, ''In my opinion, Leslie has more than adequate visual acuity and peripheral vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Landschoot reported that he has driven straight trucks for 29 years, accumulating 870,000 miles, and tractor-trailer combinations for 15 years, accumulating 300,000 miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*James W. Lappan*

Mr. Lappan, 28, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/15 and in the left, 20/400. Following an examination in 2007, his optometrist noted, ''James has stable vision, in my opinion, has sufficient vision to drive a commercial vehicle.'' Mr. Lappan reported that he has driven straight trucks for 10 years, accumulating 30,000 miles, and tractor-trailer combinations for 6 years, accumulating 180,000 miles. He holds a Class A CDL from Kansas. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 12 mph.

*Billy J. Lewis*

Mr. Lewis, 40, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/70. Following an examination in 2008, his optometrist noted, ''In my opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Lewis reported that he has driven straight trucks for 21 years, accumulating 945,000 miles, and tractor-trailer combinations for 9 months, accumulating 30,000 miles. He holds a Class B CDL from Louisiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Larry McCoy, Sr.*

Mr. McCoy, 56, has had central serous retinopathy in his right eye since 2003. The best corrected visual acuity in his right eye is 20/125 and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''In my medical opinion, Larry McCoy has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. McCoy reported that he has driven straight trucks for 9 years, accumulating 540,000 miles, and tractor-trailer combinations for 16 years, accumulating 1.6 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Tommy L. McKnight*

Mr. McKnight, 52, has had amblyopia in his right since childhood. The visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''His vision is adequate for all driving tasks, with no restrictions, for all types of vehicles.'' Mr. McKnight reported that he has driven straight trucks for 1½ years, accumulating 81,864 miles, and tractor-trailer combinations for 3½ years, accumulating 232,078 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows one crash and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 11 mph.

*Robert W. McMillan*

Mr. McMillan, 44, has a prosthetic left eye due to a traumatic injury sustained six years ago. The visual acuity in his right eye is 20/20. Following an examination in 2008, his ophthalmologist noted, ''I have no doubt he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. McMillan reported that he has driven straight trucks for 3 years, accumulating 14,799 miles, and tractor-trailer combinations for 10 years, accumulating 723,900 miles. He holds a Class A CDL from Massachusetts. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Danny W. Nuckles*

Mr. Nuckles, 66, has complete loss of vision in the left eye due to corneal opacity which was result of a traumatic injury sustained in 1965. The best corrected visual acuity in his right eye is 20/25. Following an examination in 2007, his optometrist noted, ''I certify that in my medical opinion, that Mr. Nuckles has significant vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Nuckles reported that he has driven straight trucks for 20 years, accumulating 273,100 miles, and tractor-trailer combinations for 12 years, accumulating 179,460 miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*David G. Olsen*

Mr. Olsen, 46, has a prosthetic right eye due to a traumatic injury sustained at the age of 24. The visual acuity in his left eye is 20/20. Following an examination in 2008, his optometrist noted, ''I feel in my medical opinion that he is able and has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Olsen reported that he has driven straight trucks for 20 years, accumulating 624,000 miles, and tractor-trailer combinations for 2 years, accumulating 59,520 miles. He holds a Class A CDL from Idaho. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Robert L. Person*

Mr. Person, 47, has a prosthetic left eye due to a traumatic injury sustained at the age of 37. The visual acuity in his right eye is 20/20. Following an examination in 2008, his ophthalmologist noted, ''I do feel that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Person reported that he has driven straight trucks for 4 years, accumulating 28,000 miles, and tractor-trailer combinations for 8 years, accumulating 800,000 miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Carroll G. Quisenberry*

Mr. Quisenberry, 58, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is light perception and in the left, 20/20. Following an examination in 2008, his ophthalmologist noted, ''It is my professional opinion that Mr. Quisenberry has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Quisenberry reported that he has driven straight trucks for 10 years, accumulating 10,000 miles, tractor-trailer combinations for 3½ years, accumulating 28,700 miles, and buses for 3 years, accumulating 135,000 miles. He holds a Class A CDL from Kentucky. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Ryan J. Reimann*

Mr. Reimann, 51, has had amblyopia in his right eye since childhood. The

best corrected visual acuity in his right eye is 20/80 and in the left, 20/20. Following an examination in 2008, his optometrist noted, ''It is my professional opinion that Mr. Reimann is safe to drive commercial motor vehicles under both intrastate/interstate with his current corrected visual acuity.'' Mr. Reimann reported that he has driven straight trucks for 7 years, accumulating 350,000 miles, and tractor-trailer combinations for 26 years, accumulating 2 million miles. He holds a Class A CDL from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Ronny L. Rogers*

Mr. Rogers, 60, has macular scarring in his right eye due to trauma sustained in 1975. The visual acuity in his right eye is 20/400 and in the left, 20/20. Following an examination in 2008, his optometrist noted, ''I have no hesitations for Ronny to operate a commercial vehicle.'' Mr. Rogers reported that he has driven straight trucks for 40 years, accumulating 40,000 miles, and tractor-trailer combinations for 20 years, accumulating 2.8 million miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 20 mph.

*Paul L. Savage*

Mr. Savage, 65, has a prosthetic left eye due to a traumatic injury sustained in 1950. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2008, his optometrist noted, ''I do believe he has the vision capability to perform his duties. He has had no change in his eyes or vision and has been successful as a commercial driver for quite some time.'' Mr. Savage reported that he has driven straight trucks for 27 years, accumulating 324,000 miles, and tractor-trailer combinations for 5 years, accumulating 40,000 miles. He holds a Class A CDL from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Manuel C. Savin*

Mr. Savin, 60, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''Manuel Savin has sufficient vision to drive commercial vehicles.'' Mr. Savin reported that he has driven straight trucks for 20 years, accumulating 600,000 miles. He holds a Class Chauffeur's license from Louisiana. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 15 mph.

*Brandon J. See*

Mr. See, 47, has corneal scarring in his left eye due to a traumatic injury sustained at age 39. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/100. Following an examination in 2008, his optometrist noted, ''It is my medical opinion that Brandon has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. See reported that he has driven straight trucks for 4 years, accumulating 164,000 miles, and tractor-trailer combinations for 3 months, accumulating 1,500 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Douglas A. Sharp*

Mr. Sharp, 48, has a prosthetic right eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2008, his optometrist noted, ''In my medical, with corrective lenses, Mr. Sharp has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Sharp reported that he has driven tractor-trailer combinations for 16 years, accumulating 2.2 million miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*LeTroy D. Sims*

Mr. Sims, 30, has a prosthetic left eye due to a traumatic injury that he sustained at the age of 15. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2008, his ophthalmologist noted, ''I do feel he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Sims reported that he has driven straight trucks for 6 years, accumulating 600,000 miles. He holds a Class D operator's license from South Carolina. His driving record for the last 3 years shows one crash and no conviction for moving violations in a CMV.

*Robert M. Stewart*

Mr. Stewart, 39, has a macular hole and scar in his left eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is 20/20 and in the left, count-finger vision. Following an examination in 2008, his optometrist noted, ''I certify in my medical opinion Robert Stewart has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Stewart reported that he has driven tractor-trailer combinations 5 years, accumulating 750,000 miles. He holds a Class A CDL from Arkansas. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 14 mph.

*John L. Stone*

Mr. Stone, 57, has complete loss of vision in his right eye due to a traumatic injury sustained as a child. The visual acuity in his right eye is 20/20. Following an examination in 2008, his optometrist noted, ''I certify that in my medical opinion as a licensed optometrist, John Stone has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Stone reported that he has driven straight trucks for 12 years, accumulating 450,000 miles. He holds a Class C operator's license from Pennsylvania.

His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Robert J. Szeman*

Mr. Szeman, 52, has loss of vision in his left eye due to a branch retinal vein occlusion since 2004. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/50. Following an examination in 2008, his optometrist noted, ''In summary, I feel that Robert's overall vision is sufficient to perform the tasks of driving a commercial vehicle.'' Mr. Szeman reported that he has driven straight trucks for 30 years, accumulating 858,000 miles. He holds a Class B CDL from Pennsylvania. His driving record for the last 3 years shows one crash and no convictions for moving violations in a CMV.

*Donald J. Thompson*

Mr. Thompson, 61, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/400. Following an examination in 2008, his ophthalmologist noted, ''In my medical opinion, he has sufficient vision to perform the driving tests required to operate a commercial vehicle.'' Mr. Thompson reported that he has driven straight trucks for 25 years, accumulating 500,000 miles, and tractor-trailer combinations for 30 years,

accumulating 750,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Nils S. Thornberg*

Mr. Thornberg, 53, has a prosthetic left eye due to trauma sustained as a child. The visual acuity in his right eye is 20/15. Following an examination in 2008, his ophthalmologist noted, ''In my opinion, Nils Thornberg has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Thornberg reported that he has driven tractor-trailer combinations for 35 years, accumulating 357,000 miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV, failure to obey a traffic control device.

*Daniel W. Toppings*

Mr. Toppings, 45, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2008, his optometrist noted, ''I have personally examined the vision of Mr. Toppings and believe he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Toppings reported that he has driven tractor-trailer combinations for 17 years, accumulating 2.4 million miles. He holds a Class A CDL from West Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Kenneth E. Valentine*

Mr. Valentine, 41, has loss of vision in his right eye due to a traumatic injury sustained at age 21. The visual acuity in his right eye is light perception and in the left, 20/20. Following an examination in 2008, his optometrist noted, ''In my professional opinion, Kenneth Valentine has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Valentine reported that he has driven straight trucks for 19 years, accumulating 950,000 miles, and tractor-trailer combinations for 19 years, accumulating 2.4 million miles. He holds a Class A CDL from Mississippi. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Lewis H. West, Jr.*

Mr. West, 39, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20 and in the left, 20/50. Following an examination in 2008, his optometrist noted, ''In my medical opinion, this patient has sufficient vision to perform the tasks to operate a commercial vehicle.'' Mr. West reported that he has driven tractor-trailer combinations for 9 ¾ years, accumulating 126,750 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Christopher R. Whitson*

Mr. Whitson, 33, has an enucleation of the left eye due to a traumatic injury sustained as a child. The visual acuity in his right eye is 20/15. Following an examination in 2008, his ophthalmologist noted, ''In my opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Whitson reported that he has driven straight trucks for 5 years, accumulating 37,500 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Leon S. Willis*

Mr. Willis, 63, has retinal damage in his left eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is 20/15 and in the left, light perception. Following an examination in 2008, his optometrist noted, ''In my medical opinion. Mr. Willis has sufficient vision to perform tasks required to safely operate a commercial vehicle.'' Mr. Willis reported that he has driven tractor-trailer combinations for 35 years, accumulating 3.2 million miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV. He was following another vehicle too closely.

*George L. Young*

Mr. Young, 68, has complete loss of vision in his left eye due to optic nerve atrophy. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2008, his ophthalmologist noted, ''In my medical opinion, Mr. Young has sufficient vision to operate a commercial vehicle.'' Mr. Young reported that he has driven straight trucks for 1½ years, accumulating 54,000 miles, and tractor-trailer combinations for 35 years, accumulating 3.3 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

**Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business July 21, 2008. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: June 13, 2008.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

[FR Doc. E8–14003 Filed 6–19–08; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–260 (Sub–No. 2X)]**

### Rarus Railway Company—Abandonment Exemption—in Deer Lodge County, MT

Rarus Railway Company (Rarus) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its Anaconda/West Valley Line, an approximately 4.7-mile line of railroad, extending between a point at Pennsylvania Avenue west of the West Anaconda Yard in Anaconda, MT, and a point at North Cable Road approximately 4.2 miles west of Anaconda, in Deer Lodge County, MT. The line traverses United States Postal Service Zip Code 59711.

Rarus has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR

1105.8 (historic report),[1] 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 22, 2008, unless stayed pending reconsideration.[2] Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 30, 2008. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 10, 2008, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to Rarus' representative: James E. Howard, One Thompson Square, Suite 201, Charlestown, MA 02129.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Rarus has filed environmental and historic correspondence pursuant to its discussions with SEA regarding submission of a preliminary draft environmental assessment. SEA will issue an environmental assessment (EA) by June 27, 2008. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), Rarus shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by Rarus' filing of a notice of consummation by June 20, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 16, 2008.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

**Anne K. Quinlan,**

*Acting Secretary.*

[FR Doc. E8–13962 Filed 6–19–08; 8:45 am]

**BILLING CODE 4915–01–P**

[1] The Board's Section of Environmental Analysis (SEA) has approved the request of Rarus to submit a preliminary draft environmental assessment in lieu of the environmental and historic reports required by 49 CFR 1105.7 and 49 CFR 1105.8.

[2] The earliest this transaction may be consummated is July 22, 2008. Rarus confirmed this date by letter filed on June 5, 2008.

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by SEA in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Each OFA must be accompanied by the filing fee, which currently is set at $1,300. *See* 49 CFR 1002.2(f)(25).

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 35128]**

### The Port of Seattle—Acquisition Exemption—Certain Assets of BNSF Railway Company

The Port of Seattle (the Port), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 [1] to acquire from BNSF Railway Company (BNSF) approximately 14.45 miles of rail line (the Line), including right-of-way, track, and other property and physical assets, extending between approximately milepost 23.80 (north of Woodinville) and approximately milepost 38.25 (Snohomish), in King County and Snohomish County, WA.[2]

The Port states that it will not operate the Line but is acquiring it to preserve the Line as a rail and transportation corridor. BNSF, according to the Port, will retain an exclusive, permanent easement to conduct freight operations on the Line. Simultaneously with the closing of the transaction, BNSF will convey the easement to a third party operator which will secure separate Board approval or an exemption to conduct freight common carrier service on the Line.[3]

Stating that it will not conduct any freight operations on the Line, the Port certifies that its projected annual revenues as a result of the transaction will not exceed those that would qualify it as a Class III rail carrier. The Port states that it plans to consummate the acquisition of the Line on or after September 30, 2008. The exemption is scheduled to become effective on July 4, 2008 (30 days after the exemption was deemed to have been filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay will be due no later than June 27, 2007 (at least 7 days before the effective date of the exemption).

An original and 10 copies of all pleadings referring to STB Finance Docket No. 35128 must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, 1601 K Street, NW., Washington, DC 2006.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: June 11, 2008.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

**Anne K. Quinlan,**

*Acting Secretary.*

[FR Doc. E8–13806 Filed 6–19–08; 8:45 am]

**BILLING CODE 4915–01–P**

[1] This notice was initially submitted on May 28, 2008, but was not docketed until June 4, 2008, when the filing fee was submitted. Because the notice could not be processed until the Board received the filing fee, June 4, 2008, is the official filing date.

[2] The Port will also acquire from BNSF the right-of-way, track, and other property and physical assets between the southern endpoint of the Line at milepost 23.8 and milepost 23.45 together with the Redmond Spur, which connects with the Line at milepost 23.80 and extends between milepost 0.00 and milepost 7.30 in Redmond, WA. Pursuant to a separate agreement, BNSF will donate to the Port the right-of-way, track, and other property and physical assets of the line that extends between milepost 23.45 and milepost 5.00 in Renton, WA. BNSF will file for Board approval or an exemption to abandon these rights-of-way and track before selling/donating them to the Port.

[3] In the same docket, the Port simultaneously filed a motion to dismiss its verified notice of exemption on jurisdictional grounds. That request will be considered in a separate Board decision.

## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network; Agency Information Collection; Comment Request; Renewal Without Change of the Suspicious Activity Report by Money Services Businesses

**AGENCY:** Financial Crimes Enforcement Network (''FinCEN''), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on the proposed renewal without change of the form, Suspicious Activity Report by Money Services Businesses, FinCEN Form 109. The form will be used by money transmitters, issuers, sellers, and redeemers of money orders and traveler's checks, and currency dealers and exchangers to report suspicious activity to the Department of the Treasury. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

**DATES:** Written comments are welcome and must be received on or before August 19, 2008.

**ADDRESSES:** Written comments should be submitted to: Office of Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183, Attention: PRA Comments—Suspicious Activity Report by Money Services Business, FinCEN Form 109. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.gov,* again with a caption, in the body of the text, ''*Attention:* PRA Comments–SAR–MSB Form''.

*Inspection of comments.* Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (Not a toll free call).

**FOR FURTHER INFORMATION CONTACT:** The FinCEN Regulatory helpline at (800) 949–2732 and select Option 1.

**SUPPLEMENTARY INFORMATION:**

*Title:* Suspicious Activity Report by Money Services Businesses and 31 CFR 103.20.

*OMB Number:* 1506–0015.

*Form Number:* FinCEN Form 109.

*Abstract:* The statute generally referred to as the ''Bank Secrecy Act,'' Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the Bank Secrecy Act appear at 31 CFR Part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

The Secretary of the Treasury was granted authority in 1992, with the enactment of 31 U.S.C. 5318(g), to require financial institutions to report suspicious transactions. On March 14, 2000, FinCEN issued a final rule requiring certain categories of money services businesses, including money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks, to report suspicious transactions (65 FR 13683). The final rule can be found at 31 CFR 103.20. FinCEN amended the suspicious transaction reporting rule for money services businesses by notice in the **Federal Register** dated February 10, 2003, (68 FR 6613), to also apply to currency dealers and exchangers. Currently, money services businesses report suspicious activity by filing FinCEN Form 109.

The information collected on Form 109 is required to be provided pursuant to 31 U.S.C. 5318(g) and 31 CFR 103.20. This information will be made available, in accordance with strict safeguards, to appropriate criminal law enforcement and regulatory personnel for use in official performance of their duties, for regulatory purposes, and in investigations and proceedings involving terrorist financing, domestic and international money laundering, tax violations, fraud, and other financial crimes.

Suspicious activity reports required to be filed by money services businesses under 31 CFR 103.20, and any suspicious activity reports filed by money services businesses on a voluntary basis will be subject to the protection from liability contained in 31 U.S.C. 5318(g)(3) and the provision contained in 31 U.S.C. 5318(g)(2) which prohibits notification of any person involved in the transaction that a suspicious activity report has been filed.

*Current Actions:* There are no proposed changes to the current SAR–MSB, FinCEN Form 109. The form is available on the FinCEN Web site at: *http://www.fincen.gov/forms/files/fin109_sarmsb.pdf* .

*Type of Review:* Renewal without change of a currently approved information collection.

*Affected public:* Business or other for-profit institutions.

*Frequency:* As required.

*Estimated Burden:* Reporting average of 45 minutes per response and 15 minutes recordkeeping for a total of 1 hour.

*Estimated Number of Respondents:* 42,000.

*Estimated Total Annual Responses:* 585,000.

*Estimated Total Annual Burden Hours:* 585,000 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid Office of Management and Budget control number. Records required to be retained under the Bank Secrecy Act must be retained for five years.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected: (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: June 13, 2008.

**James H. Freis, Jr.,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. E8–13936 Filed 6–19–08; 8:45 am]

**BILLING CODE 4810–02–P**

[1] Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (the ''USA Patriot Act''), Pub. L. 107–56.

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Additional Designation of Entity Pursuant to Executive Order 13224

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one newly-designated entity whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

**DATES:** The designation by the Director of OFAC of one entity identified in this notice, pursuant to Executive Order 13224, is effective on June 13, 2008.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

**SUPPLEMENTARY INFORMATION:**

#### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

#### Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001, terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On June 13, 2008, the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, one entity whose property and interests in property are blocked pursuant to Executive Order 13224.

The designee is as follows: REVIVAL OF ISLAMIC HERITAGE SOCIETY (a.k.a. ADMINISTRATION OF THE REVIVAL OF ISLAMIC HERITAGE SOCIETY COMMITTEE; a.k.a. CCFW; a.k.a. CENTER OF CALL FOR WISDOM; a.k.a. COMMITTEE FOR EUROPE AND THE AMERICAS; a.k.a. DORA E MIRESISE; a.k.a. GENERAL KUWAIT COMMITTEE; a.k.a. HAND OF MERCY; a.k.a. IHRS; a.k.a. IHYA TURAS AL-ISLAMI; a.k.a. IJHA TURATH AL-ISLAMI; a.k.a. ISLAMIC HERITAGE RESTORATION SOCIETY; a.k.a. ISLAMIC HERITAGE REVIVAL PARTY; a.k.a. JAMA'AH IHYA AL-TURAZ AL-ISLAMI; a.k.a. JAMIA IHYA UL TURATH; a.k.a. JAMI'AH AL-HIYA AL-TURATH AL ISLAMIYAH; a.k.a. JAMIAT IHIA AL-TURATH AL-ISLAMIYA; a.k.a. JAMI'AT IHY'A AL-TIRATH AL-ISLAMIA; a.k.a. JAMIATUL IHYA UL TURATH; a.k.a. JAMIATUL-YAHYA UT TURAZ; a.k.a. JAM'IYAT IHYA' AL-TURATH AL-ISLAMI; a.k.a. JAMIYAT IKHYA AT-TURAZ AL-ISLAMI, SOCIETY OF THE REBIRTH OF THE ISLAMIC PEOPLE; a.k.a. JOMIATUL EHYA-UT TURAJ; a.k.a. JOMIYATU-EHYA-UT TURAS AL ISLAMI; a.k.a. KJRC-BOSNIA AND HERZEGOVINA; a.k.a. KUWAIT GENERAL COMMITTEE FOR AID; a.k.a. KUWAITI HERITAGE; a.k.a. KUWAITI JOINT RELIEF COMMITTEE, BOSNIA AND HERZEGOVINA; a.k.a. LAJNAT AL-IHYA AL-TURATH AL-ISLAMI; a.k.a. LAJNAT IHYA AL-TURATH AL-ISLAMI; a.k.a. NARA WELFARE AND EDUCATION ASSOCIATION; a.k.a. NGO TURATH; a.k.a. ORGANIZACIJA PREPORODA ISLAMSKE TRADICIJE KUVAJT; a.k.a. PLANDISTE SCHOOL, BOSNIA AND HERZEGOVINA; a.k.a. REVIVAL OF ISLAMIC HERITAGE FOUNDATION; a.k.a. REVIVAL OF ISLAMIC SOCIETY HERITAGE ON THE AFRICAN CONTINENT; a.k.a. RIHF; a.k.a. RIHS; a.k.a. RIHS ADMINISTRATION FOR THE BUILDING OF MOSQUES AND ISLAMIC PROJECTS; a.k.a. RIHS ADMINISTRATION FOR THE COMMITTEES OF ALMSGIVING; a.k.a. RIHS AFRICAN CONTINENT COMMITTEE; a.k.a. RIHS ARAB WORLD COMMITTEE; a.k.a. RIHS AUDIO RECORDINGS COMMITTEE; a.k.a. RIHS CAMBODIA-KUWAIT ORPHANAGE CENTER; a.k.a. RIHS CENTER FOR MANUSCRIPTS COMMITTEE; a.k.a. RIHS CENTRAL ASIA COMMITTEE; a.k.a. RIHS CHAOM CHAU CENTER; a.k.a. RIHS COMMITTEE FOR AFRICA; a.k.a. RIHS COMMITTEE FOR ALMSGIVING AND CHARITIES; a.k.a. RIHS COMMITTEE FOR INDIA; a.k.a. RIHS COMMITTEE FOR SOUTH EAST ASIA; a.k.a. RIHS COMMITTEE FOR THE ARAB WORLD; a.k.a. RIHS COMMITTEE FOR THE CALL AND GUIDANCE; a.k.a. RIHS COMMITTEE FOR WEST ASIA; a.k.a. RIHS COMMITTEE FOR WOMEN; a.k.a. RIHS COMMITTEE FOR WOMEN, ADMINISTRATION FOR THE BUILDING OF MOSQUES; a.k.a. RIHS CULTURAL COMMITTEE; a.k.a. RIHS

EDUCATING COMMITTEES, AL-JAHRA'; a.k.a. RIHS EUROPE AMERICA MUSLIMS COMMITTEE; a.k.a. RIHS EUROPE AND THE AMERICAS COMMITTEE; a.k.a. RIHS FATWAS COMMITTEE; a.k.a. RIHS GENERAL COMMITTEE FOR DONATIONS; a.k.a. RIHS HEADQUARTERS-KUWAIT; a.k.a. RIHS INDIAN CONTINENT COMMITTEE; a.k.a. RIHS INDIAN SUBCONTINENT COMMITTEE; a.k.a. RIHS MOSQUES COMMITTEE; a.k.a. RIHS OFFICE OF PRINTING AND PUBLISHING; a.k.a. RIHS PRINCIPLE COMMITTEE FOR THE CENTER FOR PRESERVATION OF THE HOLY QU'ARAN; a.k.a. RIHS PROJECT OF ASSIGNING PREACHERS COMMITTEE; a.k.a. RIHS PUBLIC RELATIONS COMMITTEE; a.k.a. RIHS SCIENTIFIC COMMITTEE-BRANCH OF SABAH AL-NASIR; a.k.a. RIHS SOUTHEAST ASIA COMMITTEE; a.k.a. RIHS TWO AMERICAS AND EUROPEAN MUSLIM COMMITTEE; a.k.a. RIHS WOMEN'S BRANCH FOR THE PROJECT OF ENDOWMENT; a.k.a. RIHS YOUTH CENTER COMMITTEE; a.k.a. RIHS-ALBANIA; a.k.a. RIHS-AZERBAIJAN; a.k.a. RIHS-BANGLADESH; a.k.a. RIHS-BENIN; a.k.a. RIHS-BOSNIA AND HERZEGOVINA; a.k.a. RIHS-CAMBODIA; a.k.a. RIHS-CAMEROON; a.k.a. RIHS-GHANA; a.k.a. RIHS-IVORY COAST; a.k.a. RIHS-KOSOVO; a.k.a. RIHS-LEBANON; a.k.a. RIHS-LIBERIA; a.k.a. RIHS-NIGERIA; a.k.a. RIHS-RUSSIA; a.k.a. RIHS-SENEGAL; a.k.a. RIHS-SOMALIA; a.k.a. RIHS-TANZANIA; a.k.a. SOCIETY FOR THE REVIVAL OF ISLAMIC HERITAGE; a.k.a. THE KUWAIT-CAMBODIA ISLAMIC CULTURAL TRAINING CENTER; a.k.a. THE KUWAITI-CAMBODIAN ORPHANAGE CENTER; a.k.a. THIRRJA PER UTESI), Al-Andalus, Kuwait; Al-Jahra', Kuwait; Al-Qurayn, Kuwait; Sabah Al-Nasir, Kuwait; Qurtubah, Kuwait; Hadiyah, Kuwait; Al-Qadisiyah, Kuwait; Al-Fayha', Kuwait; Al-Riqah, Kuwait; Al-Firdaws, Kuwait; Khitan, Kuwait; Al-Sabahiyah, Kuwait; Jalib Al-Shiyukh, Kuwait; Bayan Wa Mashrif, Kuwait; Sabah Al-Salim, Kuwait; Al-Rumaythiyah, Kuwait; Al-Salimiyah, Kuwait; Al-Aridiyah, Kuwait; Al-Khalidiya, Kuwait; Al-Dhahr, Kuwait; Al-Rawdah, Kuwait; Al-Shamiyah Wa Al-Shuwaykh, Kuwait; Al-Amiriyah, Kuwait; Al-Nuzhah, Kuwait; Kifan, Kuwait; House #40, Lake Drive Road, Sector #7, Uttara, Dhaka, Bangladesh; Part 5, Qurtaba, P.O. Box 5585, Safat, Kuwait; Number 28 Mula Mustafe Baseskije Street, Sarajevo, Bosnia and Herzegovina; Number 2 Plandiste Street, Sarajevo, Bosnia and Herzegovina; M.M. Baseskije Street, No. 28p, Sarajevo, Bosnia and Herzegovina; Number 6 Donji Hotonj Street, Sarajevo, Bosnia and Herzegovina; RIHS Office, Ilidza, Bosnia and Herzegovina; RIHS Alija House, Ilidza, Bosnia and Herzegovina; RIHS Office, Tirana, Albania; RIHS Office, Pristina, Kosovo; Tripoli, Lebanon; City of Sidon, Lebanon; Dangkor District, Phnom Penh, Cambodia; Kismayo, Somalia; Kaneshi Quarter of Accra, Ghana; Web site *www.alturath.org.* Revival of Islamic Heritage Society Offices Worldwide. [SDGT].

Dated:June 13, 2008.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. E8–14024 Filed 6–19–08; 8:45 am]

**BILLING CODE 4811–45–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Additional Designation of Individuals Pursuant to Executive Order 13224

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of seven newly-designated individuals whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

**DATES:** The designation by the Director of OFAC of seven individuals identified in this notice, pursuant to Executive Order 13224, is effective on June 16, 2008.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Compliance Outreach and Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

**SUPPLEMENTARY INFORMATION:**

#### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

#### Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001, terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or

to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On June 16, 2008 the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, seven individuals whose property and interests in property are blocked pursuant to Executive Order 13224.

The list of designees is as follows: PAREJA, Dinno Amor Rosalejos (a.k.a. AMINAH, Khalil Pareja; a.k.a. PAREJA, Dinno Rosalejos; a.k.a. PAREJA, Johnny; a.k.a. PAREJA, Kahlil; a.k.a. PAREJA, Khalil; a.k.a. ROSALEJOS-PAREJA, Dino Amor), Atimonan, Quezon Province, Philippines; DOB 19 Jul 1981; POB Cebu City, Cebu Province, Philippines; nationality Philippines (individual) [SDGT].

TRINIDAD, Angelo Ramirez (a.k.a. TOMAS, Adrian; a.k.a. TRINIDAD Y RAMIREZ, Angelo; a.k.a. TRINIDAD, Abu Khalil; a.k.a. TRINIDAD, Calib; a.k.a. TRINIDAD, Kalib; a.k.a. TRINIDAD, Khalil; a.k.a. TRINIDAD, Khulil), 3111 Ma. Bautista, Punta, Santa Ana, Manila, Philippines; DOB 20 Mar 1978; POB Gattaran, Cagayan Province, Philippines; nationality Philippines (individual) [SDGT].

DE VERA, Pio Abogne (a.k.a. DE VERA Y ABOGNE, Pio; a.k.a. DE VERA, Esmael; a.k.a. DE VERA, Ismael; a.k.a. DE VERA, Ismail; a.k.a. DE VERA, Pio Abagne; a.k.a. DE VERA, Pio Abogue; a.k.a. OBOGNE, Leo M.; a.k.a. ''ART, Tito''; a.k.a. ''MANEX''), Concepcion, Zaragosa, Nueva Ecija Province, Philippines; DOB 19 Dec 1969; POB Bagac, Bagamanok, Catanduanes Province, Philippines; nationality Philippines (individual) [SDGT].

DELLOSA, Redendo Cain (a.k.a. AKMAL, Hakid; a.k.a. ALVARADO, Arnulfo; a.k.a. BERUSA, Brandon; a.k.a. DELLOS, Reendo Cain; a.k.a. DELLOSA Y CAIN, Redendo; a.k.a. DELLOSA, Ahmad; a.k.a. DELLOSA, Habil Ahmad; a.k.a. DELLOSA, Habil Akmad; a.k.a. DELLOSA, Redendo Cain Jabil; a.k.a. ILONGGO, Abu; a.k.a. LLONGGO, Abu; a.k.a. MUADZ, Abu), 3111 Ma. Bautista Street, Punta, Santa Ana, Manila, Philippines; DOB 15 May 1972; POB Punta, Santa Ana, Manila, Philippines; nationality Philippines; SSN 33–3208848–3 (Philippines) (individual) [SDGT].

DELOS REYES, Feliciano Semborio, Jr. (a.k.a. ABDILLAH, Abdul; a.k.a. ABDILLAH, Abubakar; a.k.a. ABDILLAH, Ustadz Abubakar; a.k.a. CASTRO, Jorge; a.k.a. DE LOS REYES, Feliciano; a.k.a. DE LOS REYES, Feliciano Abubakar; a.k.a. DELOS REYES Y SEMBERIO, Feleciano; a.k.a. DELOS REYES, Feleciano Semborio; a.k.a. DELOS REYES, Ustadz Abubakar; a.k.a. REYES, Abubakar); DOB 4 Nov 1963; POB Arco, Lamitan, Basilan Province, Philippines; nationality Philippines (individual) [SDGT].

AYERAS, Ricardo Perez (a.k.a. AYERAS, Abdul Kareem; a.k.a. AYERAS, Abdul Karem; a.k.a. AYERAS, Abdul Karim; a.k.a. AYERAS, Khalil; a.k.a. AYERAS, Ricardo Abdulkareem; a.k.a. AYERAS, Ricardo Abdulkarim; a.k.a. AYERAS, Ricky; a.k.a. AYERS, Abdul Karim; a.k.a. MUJIB, Abdul; a.k.a. PEREZ, Isaac Jay Galang; a.k.a. PEREZ, Jay), 24 Paraiso Street, Barangay Poblacion, Mandaluyong City, Manila, Philippines; DOB 15 Sep 1973; POB 24 Paraiso Street, Barangay Poblacion, Mandaluyong City, Manila, Philippines; nationality Philippines (individual) [SDGT].

LAVILLA, Ruben Pestano, Jr. (a.k.a. DE LAVILLA, Mike; a.k.a. LABELLA, Omar; a.k.a. LAVILLA, Mile D.; a.k.a. LAVILLA, Omar; a.k.a. LAVILLA, Ramo; a.k.a. LAVILLA, Reuben; a.k.a. LAVILLA, Reuben Omar; a.k.a. LAVILLA, Reymund; a.k.a. LOBILLA, Shaykh Omar; a.k.a. MUDDARIS, Abdullah; a.k.a. SHARIEF, Ahmad Omar), 10th Avenue, Caloocan City, Manila, Philippines; Sitio Banga Maiti, Barangay Tranghawan, Lambunao, Iloilo Province, Philippines; DOB 4 Oct 1972; POB Sitio Banga Maiti, Barangay Tranghawan, Lambunao, Iloilo Province, Philippines; nationality Philippines (individual) [SDGT].

Dated: June 16, 2008.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. E8–14019 Filed 6–19–08; 8:45 am]

**BILLING CODE 4811–45–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Unblocking of Specially Designated Narcotics Traffickers Pursuant to Executive Order 12978

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of 60 individuals whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers.*

**DATES:** The unblocking and removal from the list of Specially Designated Narcotics Traffickers of 60 individuals identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on June 16, 2008.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

**SUPPLEMENTARY INFORMATION:**

#### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: (202) 622–0077.

#### Background

On October 21, 1995, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State, to play a significant role in international narcotics trafficking centered in Colombia; or (3) to materially assist in, or provide financial or technological support for goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to this order; and (4) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to this Order.

On June 16, 2008, the Director of OFAC removed from the list of

Specially Designated Narcotics Traffickers 60 individuals listed below, whose property and interests in property were blocked pursuant to the Order.

The listing of the unblocked individuals follows:

1. ARIAS TRIANA, Alicia, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COMUDROGAS LTDA., Bucaramanga, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; Cedula No. 63341345 (Colombia) (individual) [SDNT].

2. AYALA BURBANO, Vilma Eddy, c/o COOPERATIVA MERCANTIL DEL SUR LTDA., Pasto, Colombia; Cedula No. 30730438 (Colombia); Passport 30730438 (Colombia) (individual) [SDNT].

3. BAUTISTA GALLEGO, Carmen Mariela, c/o COPSERVIR LTDA., Bogota, Colombia; Cedula No. 34537461 (Colombia) (individual) [SDNT].

4. BELTRAN RODRIGUEZ, Alvaro, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COOPCREAR, Bogota, Colombia; DOB 10 Aug 1970; Cedula No. 79139759 (Colombia); Passport 79139759 (Colombia) (individual) [SDNT].

5. BERDUGO CASTILLO, Wilson Jose, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; Cedula No. 8724954 (Colombia) (individual) [SDNT].

6. CABAL DAZA, Carlos Alfonso, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COOPIFARMA, Bucaramanga, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o FARMAVISION LTDA., Bogota, Colombia; Carrera 13G No. 36A–03 Sur, Bogota, Colombia; Carrera 2N No. 39A–35, Bogota, Colombia; Cedula No. 79320690 (Colombia) (individual) [SDNT].

7. CARO MORENO, Arcadio, c/o COOPDISAN, Bucaramanga, Colombia; c/o DROGAS LA REBAJA BUCARAMANGA S.A., Bucaramanga, Colombia; Cedula No. 91207732 (Colombia); Passport 91207732 (Colombia) (individual) [SDNT].

8. CARTAGENA AVILA, Tito, c/o COOPERATIVA MERCANTIL COLOMBIANA COOMERCOL, Cali, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; DOB 6 Jun 1961; Cedula No. 16659672 (Colombia); Passport 16659672 (Colombia) (individual) [SDNT].

9. CASTANEDA CASTRO, Antonio, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COOMULCOSTA, Barranquilla, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; Cedula No. 8534700 (Colombia) (individual) [SDNT].

10. CASTRO CABAL, Maria Beatriz, c/o CONTACTEL COMUNICACIONES S.A., Cali, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; DOB 11 May 1974; Cedula No. 66772109 (Colombia); Passport 66772109 (Colombia) (individual) [SDNT].

11. CUERVO DE BUITRAGO, Elsy, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o FARMAVISION LTDA., Bogota, Colombia; Cedula No. 20791726 (Colombia) (individual) [SDNT].

12. DIAZ PONTON, Gonzalo, c/o COOPDISAN, Bucaramanga, Colombia; c/o DROGAS LA REBAJA BUCARAMANGA S.A., Bucaramanga, Colombia; Cedula No. 18938771 (Colombia); Passport 18938771 (Colombia) (individual) [SDNT].

13. DIAZ TOVAR, Moises, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o MEGAPHARMA LTDA., Bogota, Colombia; Cedula No. 12112342 (Colombia) (individual) [SDNT].

14. ESCALANTE CARROLL, Enrique Jose, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o FARMAVISION LTDA., Bogota, Colombia; Transv. 74 No. 10–14, Bogota, Colombia; Cedula No. 72170764 (Colombia) (individual) [SDNT].

15. ESTELA ELVIRA, Adrian Fernando, c/o COOPERATIVA MULTIACTIVA DE COLOMBIA FOMENTAMOS, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; DOB 10 Apr 1968; Cedula No. 76306726 (Colombia); Passport 76306726 (Colombia) (individual) [SDNT].

16. ESTUPINAN DUARTE, Adriana, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; Cedula No. 63445395 (Colombia) (individual) [SDNT].

17. FLOREZ ARCILA, Rafael Antonio, c/o COPSERVIR LTDA., Bogota, Colombia; c/o MEGAPHARMA LTDA., Bogota, Colombia; Cedula No. 79712667 (Colombia) (individual) [SDNT].

18. FORERO BENAVIDES, Patricia, c/o COPSERVIR LTDA., Bogota, Colombia; c/o FARMAVISION LTDA., Bogota, Colombia; Cedula No. 35522503 (Colombia) (individual) [SDNT].

19. GALINDO CARDOZO, Diego Fernando, c/o COOPCREAR, Bogota, Colombia; c/o COOPERATIVA MULTIACTIVA DE COLOMBIA FOMENTAMOS, Bogota, Colombia; c/o COOPERATIVA DE TRABAJO ASOCIADO ACTIVAR, Bogota, Colombia; DOB 2 Nov 1974; Cedula No. 94320862 (Colombia); Passport 94320862 (Colombia) (individual) [SDNT].

20. GARCIA MADERA, Jaime De Jesus, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COOPERATIVA DE TRABAJO ASOCIADO ACTIVAR, Bogota, Colombia; c/o COOPERATIVA MULTIACTIVA DE COLOMBIA FOMENTAMOS, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; Cedula No. 13540183 (Colombia) (individual) [SDNT].

21. GARCIA MERA, Luis Alfredo, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o SOLUCIONES COOPERATIVAS, Bogota, Colombia; Cedula No. 16686291 (Colombia) (individual) [SDNT].

22. GARCIA ORDONEZ, Nubia Stella, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o MEGAPHARMA LTDA., Bogota, Colombia; Cedula No. 52031714 (Colombia) (individual) [SDNT].

23. GOMEZ, Teresa, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COOPIFARMA, Bucaramanga, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o FARMAVISION LTDA., Bogota, Colombia; Carrera 71 No. 7E–39, Bogota, Colombia; Cedula No. 63347044 (Colombia) (individual) [SDNT].

24. GONZALEZ FIALLO, Humberto, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o FARMAVISION LTDA., Bogota, Colombia; Cedula No. 3746199 (Colombia) (individual) [SDNT].

25. HERNANDEZ IBARRA, Victor Hugo, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o MEGAPHARMA LTDA., Bogota, Colombia; Cedula No. 12133362 (Colombia) (individual) [SDNT].

26. IZQUIERDO OREJUELA, Patricia Constanza, c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; DOB 15 Sep 1951; Cedula No. 41594424 (Colombia) (individual) [SDNT].

27. JARAMILLO V., Leticia Eugenia, c/o TRIMARK LTDA., Bogota, Colombia; Cedula No. 43040333 (Colombia) (individual) [SDNT].

28. JIMENEZ GONZALEZ, Gustavo, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o MEGAPHARMA LTDA., Bogota, Colombia; Carrera 95A No. 138–58 Int. 30–101, Bogota, Colombia; DOB 6 Jul 1969; Cedula No. 12138123 (Colombia) (individual) [SDNT].

29. LOPEZ CHAUX, Jose Miller, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o MEGAPHARMA LTDA., Bogota, Colombia; Cedula No.

12111058 (Colombia) (individual) [SDNT].

30. LUNA CATANO, Monica, c/o COOPDISAN, Bucaramanga, Colombia; c/o COPSERVIR LTDA., Bucaramanga, Colombia; c/o DROGAS LA REBAJA BUCARAMANGA S.A., Bucaramanga, Colombia; DOB 9 Sep 1968; Cedula No. 63456704 (Colombia); Passport 63456704 (Colombia) (individual) [SDNT].

31. MARTINEZ ORTIZ, Patricia, c/o COPSERVIR LTDA., Bogota, Colombia; c/o SOLUCIONES COOPERATIVAS, Bogota, Colombia; Transv. 44 No. 53–14, Bogota, Colombia; Cedula No. 31914351 (Colombia) (individual) [SDNT].

32. MARTINEZ VARGAS, Nhora Isabel, c/o COOPDISAN, Bucaramanga, Colombia; c/o COPSERVIR LTDA., Bucaramanga, Colombia; c/o DROGAS LA REBAJA BUCARAMANGA S.A., Bucaramanga, Colombia; Cedula No. 63312197 (Colombia); Passport 63312197 (Colombia) (individual) [SDNT].

33. MERCHAN, Maria Isabel, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o FARMAVISION LTDA., Bogota, Colombia; Calle 50A Sur No. 88–43, Bogota, Colombia; Cedula No. 41701657 (Colombia) (individual) [SDNT].

34. MORENO BALANTA, Orlando, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; Cedula No. 10555424 (Colombia) (individual) [SDNT].

35. MUNOZ TORRES, Sonia Marcela, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o FARMAVISION LTDA., Bogota, Colombia; Calle 42B No. 73–29, Bogota, Colombia; Cedula No. 52034959 (Colombia) (individual) [SDNT].

36. NEVADO, Sandra, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COOPIFARMA, Bucaramanga, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; Carrera 110 No. 124A–33 B. 110 Int. 6 ap. 403, Bogota, Colombia; Cedula No. 51944889 (Colombia) (individual) [SDNT].

37. OSPINA GOMEZ, Jose Fernando, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; DOB 9 Sep 1962; Cedula No. 16674357 (Colombia); Passport 16674357 (Colombia) (individual) [SDNT].

38. PABON JAIMES, Alicia, c/o COOPDISAN, Bucaramanga, Colombia; c/o COPSERVIR LTDA., Bucaramanga, Colombia; c/o DROGAS LA REBAJA BUCARAMANGA S.A., Bucaramanga, Colombia; Cedula No. 63346404 (Colombia); Passport 63346404 (Colombia) (individual) [SDNT].

39. PALMA RODRIGUEZ, Wilfrido, c/o COPSERVIR LTDA., Bogota, Colombia; Cedula No. 8724911 (Colombia) (individual) [SDNT].

40. PALOMINO QUINTERO, Edgar Arnulfo, c/o COOPDISAN, Bucaramanga, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o DROGAS LA REBAJA BUCARAMANGA S.A., Bucaramanga, Colombia; Cedula No. 91250721 (Colombia); Passport 91250721 (Colombia) (individual) [SDNT].

41. PENA OJEDA, Wilton Orlando, c/o COOPCREAR, Bogota, Colombia; c/o COOPERATIVA MULTIACTIVA DE COLOMBIA FOMENTAMOS, Bogota, Colombia; c/o COOPERATIVA DE TRABAJO ASOCIADO ACTIVAR, Bogota, Colombia; DOB 1 Apr 1975; Cedula No. 79688099 (Colombia); Passport 79688099 (Colombia) (individual) [SDNT].

42. PINEDA BASALLO, Jenny, c/o COOPERATIVA MULTIACTIVA DE COLOMBIA FOMENTAMOS, Bogota, Colombia; c/o COSMEPOP, Bogota, Colombia; c/o COOPCREAR, Bogota, Colombia; c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COOPERATIVA DE TRABAJO ASOCIADO ACTIVAR, Bogota, Colombia; DOB 6 Jul 1974; Cedula No. 52204760 (Colombia); Passport 52204760 (Colombia) (individual) [SDNT].

43. PINTO RAMIREZ, Yaneth, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; Cedula No. 63342484 (Colombia) (individual) [SDNT].

44. RAMIREZ CARDONA, Gerardo de Jesus, c/o COOPERATIVA MERCANTIL DEL SUR LTDA., Pasto, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; Cedula No. 14645156 (Colombia); Passport 14645156 (Colombia) (individual) [SDNT].

45. RIVAS ORTIZ, Sonia, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COOPERATIVA DE TRABAJO ASOCIADO ACTIVAR, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; Calle 52B No. 24–31, Cali, Colombia; Carrera 6 No. 11–43 of. 505, Cali, Colombia; DOB 11 Apr 1975; Cedula No. 66956760 (Colombia) (individual) [SDNT].

46. ROMERO INFANTE, Diana, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o MEGAPHARMA LTDA., Bogota, Colombia; Cedula No. 51976407 (Colombia) (individual) [SDNT].

47. ROMERO LOPEZ, Nydia Cristina (a.k.a. ROMERO LOPEZ, Nidia Cristina), c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o TRIMARK LTDA., Bogota, Colombia; Cedula No. 66978367 (Colombia) (individual) [SDNT].

48. SALAS BARROS, German Jose, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o FARMAVISION LTDA., Bogota, Colombia; Cedula No. 72147640 (Colombia) (individual) [SDNT].

49. SALCEDO BONILLA, Monica, c/o COPSERVIR LTDA., Bogota, Colombia; c/o SOLUCIONES COOPERATIVAS, Bogota, Colombia; Cedula No. 31979753 (Colombia) (individual) [SDNT].

50. SANCHEZ MARMOL, Maryurida, c/o COOPDISAN, Bucaramanga, Colombia; c/o DROGAS LA REBAJA BUCARAMANGA S.A., Bucaramanga, Colombia; DOB 23 Feb 1970; Cedula No. 63456242; Passport 63456242 (Colombia) (individual) [SDNT].

51. SANTOYO ORTIZ, Nelson, c/o COOPDISAN, Bucaramanga, Colombia; c/o COPSERVIR LTDA., Bucaramanga, Colombia; c/o DROGAS LA REBAJA BUCARAMANGA S.A., Bucaramanga, Colombia; c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COMUDROGAS LTDA., Bucaramanga, Colombia; Cedula No. 91290248 (Colombia); Passport 91290248 (Colombia) (individual) [SDNT].

52. SERNA SERNA, Jairo, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; Cedula No. 14888822 (Colombia) (individual) [SDNT].

53. SILVA AVENDANO, Carlos Julio, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o FARMAVISION LTDA., Bogota, Colombia; Carrera 4A No. 36B–07, Bogota, Colombia; Cedula No. 3229188 (Colombia) (individual) [SDNT].

54. SILVA OLARTE, Pedro Eliseo, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o FARMAVISION LTDA., Bogota, Colombia; Cedula No. 19407837 (Colombia) (individual) [SDNT].

55. SOTO CELIS, Oscar, c/o COPSERVIR LTDA., Bogota, Colombia; Cedula No. 16546889 (Colombia) (individual) [SDNT].

56. STEFFENS VILLARREAL, Alberto Arturo, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o TRIMARK LTDA., Bogota, Colombia; Cedula No. 8779928 (Colombia) (individual) [SDNT].

57. TARAZONA HERNANDEZ, Edgar Javier, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA.,

Bogota, Colombia; Cedula No. 91253529 (Colombia) (individual) [SDNT].

58. TRUJILLO, Maria Fernanda, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o MEGAPHARMA LTDA., Bogota, Colombia; Cedula No. 36184410 (Colombia) (individual) [SDNT].

59. VALENZUELA OTALORA, Manuel Enrique, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o MEGAPHARMA LTDA., Bogota, Colombia; Cedula No. 7695208 (Colombia) (individual) [SDNT].

60. VELASQUEZ SCARPETTA, Elizabeth, c/o COPSERVIR LTDA., Bogota, Colombia; c/o SOLUCIONES COOPERATIVAS, Bogota, Colombia; Cedula No. 31844085 (Colombia) (individual) [SDNT].

Dated: June 16, 2008.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. E8–14018 Filed 6–19–08; 8:45 am]

**BILLING CODE 4811–45–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 10001

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 10001, Request for Closing Agreement Relating to Advance Refunding Issue Under Sections 148 and 7121 and Revenue Procedure 96–41.

**DATES:** Written comments should be received on or before August 19, 2008 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, at (202) 622–6688, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Carolyn.N.Brown@irs.gov.*

**SUPPLEMENTARY INFORMATION:** Title: Request for Closing Agreement Relating to Advance Refunding Issue Under Sections 148 and 7121 and Revenue Procedure 96–41.

*OMB Number:* 1545–1492.

*Form Number:* 10001.

*Abstract:* Form 10001 is used in conjunction with a closing agreement program involving certain issuers of tax exempt advance refunding bonds. Revenue Procedure 96–41 established this voluntary compliance program and prescribed the filing of Form 10001 to request a closing agreement.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* State, local or tribal governments, and not-for-profit institutions.

*Estimated Number of Respondents:* 100.

*Estimated Time per Respondent:* 3 hrs.

*Estimated Total Annual Burden Hours:* 300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 16, 2008.

**Allan Hopkins,**

*IRS Reports Clearance Officer.*

[FR Doc. E8–14028 Filed 6–19–08; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8827.

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8827, Credit for Prior Year Minimum Tax-Corporations.

**DATES:** Written comments should be received on or before August 19, 2008 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at *Carolyn.N.Brown@irs.gov.*

**SUPPLEMENTARY INFORMATION:** Title: Credit for Prior Year Minimum Tax-Corporations.

*OMB Number:* 1545–1257.

*Form Number:* 8827.

*Abstract:* Internal Revenue code Section 53(d), as revised, allows corporations a minimum tax credit based on the full amount of alternative minimum tax incurred in tax years beginning after 1989, or a carryforward for use in a future year. Form 8827 is used by corporations to compute the minimum tax credit, if any, for alternative minimum tax incurred in

prior tax years and to compute any minimum tax credit carryforward.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and farms.

*Estimated Number of Respondents:* 25,000.

*Estimated Time per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 25,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 16, 2008.

**Allan Hopkins,**

*IRS Reports Clearance Officer.*

[FR Doc. E8–14029 Filed 6–19–08; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 5305A-SEP

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5305A-SEP, Salary Reduction Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.

**DATES:** Written comments should be received on or before August 19, 2008 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at *Carolyn.N.Brown@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Salary Reduction Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.

*OMB Number:* 1545–1012.

*Form Number:* 5305A-SEP.

*Abstract:* Form 5305A-SEP is used by an employer to make an agreement to provide benefits to all employees under a Simplified Employee Pension (SEP) described in Internal Revenue Code section 408(k). This form is not to be filed with the IRS, but is to be retained in the employer's records as proof of establishing a SEP and justifying a deduction for contributions made to the SEP.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and individuals.

*Estimated Number of Respondents:* 100,000.

*Estimated Time per Respondent:* 9 hours, 43 minutes.

*Estimated Total Annual Burden Hours:* 972,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 16, 2008.

**Allan Hopkins,**

*IRS Reports Clearance Officer.*

[FR Doc. E8–14032 Filed 6–19–08; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Proposed Agency Information Collection Activities; Comment Request—Loans in Areas Having Special Flood Hazards

**AGENCY:** Office of Thrift Supervision (OTS), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of

Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

**DATES:** Submit written comments on or before August 19, 2008.

**ADDRESSES:** Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

**FOR FURTHER INFORMATION CONTACT:** You can request additional information about this proposed information collection from Ekita Mitchell, (202) 906–6451, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

*Title of Proposal:* Loans in Areas Having Special Flood Hazards.

*OMB Number:* 1550–0088.

*Form Numbers:* N/A.

*Regulation requirement:* 12 CFR part 572.

*Description:* The borrower uses the notice to make decisions regarding the collateral to be used to secure a loan. This notice advises the borrower as to whether the property securing the loan is or will be located in a special flood hazard area, whether flood insurance on the property securing the loan is required, and includes a description of the flood insurance purchase requirements. This notice also provides the borrower with information regarding the availability of Federal assistance in the event of a declared Federal flood disaster. If a loan is being serviced by a loan servicer, this notice also is provided by the savings association to the loan servicer to assist in making the servicer aware of its responsibility for performing certain tasks on behalf of the lender ( e.g., collecting insurance premiums). The statute and OTS implementing regulations require the lending institution to retain a record of the receipt of the notice to the borrower. OTS uses this record to verify compliance.

A second notice to the borrower is required if the lending institution determines at any time during the life of a loan that adequate (required) flood insurance is not in place. This notice is used by the borrower to determine how much flood insurance to purchase.

The notice to the Federal Emergency Management Agency (FEMA) advises FEMA of the identity of the initial loan servicer and, if necessary, of changes in servicers. FEMA uses this notice to maintain current information regarding the persons to whom it should direct inquiries regarding flood insurance, or to send notices of flood insurance policy renewals.

A lending institution is required by statute and OTS implementing regulations to use the standard flood hazard determination form developed by FEMA when determining whether the property securing the loan is or will be located in a special flood hazard area.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses or other for-profit.

*Estimated Number of Respondents:* 832.

*Estimated Number of Responses:* 214,660.

*Estimated Frequency of Response:* On occasion.

*Estimated Total Burden:* 54,497 hours.

*Clearance Officer:* Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: June 12, 2008.

**Deborah Dakin,**

*Senior Deputy Chief Counsel, Regulations and Legislation Division.*

[FR Doc. E8–13937 Filed 6–19–08; 8:45 am]

**BILLING CODE 6720–01–P**

# Corrections

**Federal Register**
Vol. 73, No. 120
Friday, June 20, 2008

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 305

**[Docket No. APHIS–2007–0084]**

**RIN 0579–AC57**

### Consolidation of the Fruit Fly Regulations

*Correction*

In rule document E8–12858 beginning on page 32431 in the issue of Monday, June 9, 2008, make the following correction:

**§ 305.2 [Corrected]**

On page 32439, in § 305.2(h)(2)(ii), the table is corrected to appear as follows:

| Location | Commodity | Pest | Treatment schedule |
|---|---|---|---|
| Areas in the United States under Federal quarantine for the listed pest. | ..... | ..... | . |
| * * | * * | * * | * |
| | Any fruit or article listed in § 301.32–2(a) of this chapter. | All fruit fly species of the Family Tephritidae. | IR. |
| * * | * * | * * | * |

[FR Doc. Z8–12858 Filed 6–19–08; 8:45 am]

**BILLING CODE 1505–01–D**

Federal Register

Friday,
June 20, 2008

# Part II

# Department of the Interior

## Office of Surface Mining Reclamation and Enforcement

**30 CFR Parts 700, 724, et al.**

**Abandoned Mine Land Program; Proposed Rule**

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Parts 700, 724, 773, 785, 816, 817, 845, 846, 870, 872, 873, 874, 875, 876, 879, 880, 882, 884, 885, 886, and 887**

**RIN 1029–AC56**

**[Docket ID: OSM–2008–0003]**

## Abandoned Mine Land Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are proposing regulation changes to the Abandoned Mine Reclamation Fund (Fund) and the Abandoned Mine Land (AML) program. This proposed rule revises our regulations to be consistent with the Tax Relief and Health Care Act of 2006, Pub. L. 109–432, signed into law on December 20, 2006, which included the Surface Mining Control and Reclamation Act Amendments of 2006 (the 2006 amendments). The proposed rule reflects the extension of our statutory authority to collect reclamation fees for an additional fourteen years and to reduce the fee rates. This proposal also updates the regulations in light of the statutory amendments that change the activities State and Tribal reclamation programs may perform under the AML program, funding for reclamation grants to States and Indian tribes, and transfers to the United Mine Workers of America (UMWA) Combined Benefit Fund (CBF), the UMWA 1992 Benefit Plan, and the UMWA Multiemployer Health Benefit Plan (1993 Benefit Plan). Finally, our proposed rule extends incentives reauthorized by the 2006 amendments pertaining to the remining of certain lands and water adversely affected by past mining.

**DATES:** Comments on the proposed rule must be received on or before August 19, 2008, in order to ensure our consideration. We will accept requests to speak at a public hearing until 5 p.m., Eastern Time on July 11, 2008.

**ADDRESSES:** You may submit comments by any of the following methods:

• *Federal e-Rulemaking Portal: http://www.regulations.gov*. The rule is listed under the agency name ''OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT.'' The proposed rule has been assigned Docket ID: OSM–2008–0003.

If you would like to submit comments through the Federal e-Rulemaking Portal, go to *www.regulations.gov* and do the following. Click on the ''Advanced Docket Search'' button on the right side of the screen. Type in the Docket ID OSM–2008–0003 and click the ''Submit'' button at the bottom of the page. The next screen will display the Docket Search Results for the rulemaking. If you click on OSM–2008–0003, you can view the proposed rule and submit a comment. You can also view supporting material and any comments submitted by others.

• *Mail/Hand-Delivery/Courier to:* Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252-SIB, 1951 Constitution Avenue, NW., Washington, DC 20240. Please include the rule Docket ID (OSM–2008–0003) with your comment.

We cannot ensure that comments received after the close of the comment period (see **DATES**) will be included in the docket for the rulemaking and considered. Comments sent to an address other than those listed above (see **ADDRESSES**) will not be included in the docket for the rulemaking.

For detailed instructions on submitting comments and additional information on the rulemaking process, see ''IV. Public Comment Procedures'' in the **SUPPLEMENTARY INFORMATION** section of this document.

If you wish to comment on the information collection aspects of this proposed rule, you may submit your comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, via e-mail to *OIRA_DOCKET@omb.eop.gov*, or via facsimile to 202–365–6566.

**FOR FURTHER INFORMATION CONTACT:** Danny Lytton, Chief, Reclamation Support Division, 1951 Constitution Ave., NW., Washington, DC 20240; Telephone: 202–208–2788; E-mail: *dlytton@osmre.gov*.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Reclamation Fee and the Abandoned Mine Land Program
II. Outreach, Guidance, and Comments
III. Description of the Proposed Rule
IV. Public Comment Procedures
V. Procedural Determinations

## I. Background on the Reclamation Fee and the Abandoned Mine Land Program

### *A. How did the reclamation fee work before the 2006 amendments?*

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) created an AML reclamation program funded by a reclamation fee assessed on each ton of coal produced. The fees collected have been placed in the Fund. We, either directly or through grants to States and Indian tribes with approved AML reclamation plans under SMCRA, have been using money from the Fund primarily to reclaim lands and waters adversely impacted by mining conducted before the enactment of SMCRA and to mitigate the adverse impacts of mining on individuals and communities. Also, since Fiscal Year (FY) 1996, an amount equal to the interest earned by and paid to the Fund has been available for direct transfer to the UMWA CBF to defray the cost of providing health care benefits for certain retired coal miners and their dependents. *See* Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776, 3056, § 19143(b)(2) of Title XIX.

Section 402(a) of SMCRA fixed the reclamation fee for the period before September 30, 2007, at 35 cents per ton (or 10 percent of the value of the coal, whichever is less) for surface-mined coal other than lignite, 15 cents per ton (or 10 percent of the value of the coal, whichever is less) for coal from underground mines, and 10 cents per ton (or 2 percent of the value of the coal, whichever is less) for lignite. As originally enacted, section 402(b) of SMCRA authorized collection of reclamation fees for 15 years following the date of enactment (August 3, 1977); thus, our fee collection authority would have expired August 3, 1992. However, Congress extended the fees and our fee collection authority through September 30, 1995, in the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508, 104 Stat. 1388, § 6003(a)). The Energy Policy Act of 1992 (Pub. L. 102–486, 106 Stat. 2776, 3056, § 19143(b)(1) of Title XIX), extended the fees through September 30, 2004. A series of short interim extensions in appropriations and other acts extended the fees through September 30, 2007.

### *B. How did the AML program work before the 2006 amendments?*

SMCRA established the AML reclamation program in response to concern over extensive environmental damage caused by past coal mining activities. Before the 2006 amendments, the AML program reclaimed eligible lands and waters using money appropriated by Congress from the Fund, which came from the reclamation fees collected from the coal mining industry. Eligible lands and waters were those which were mined for coal or affected by coal mining or coal processing, were abandoned or left inadequately reclaimed prior to the

enactment of SMCRA on August 3, 1977, and for which there was no continuing reclamation responsibility under State or other Federal laws.

SMCRA established a priority system for reclaiming coal problems. Before the 2006 amendments, the AML program had five priority levels, but reclamation was focused on eligible lands and waters that reflected the top three priorities. The first priority was ''the protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices.'' 30 U.S.C. 1233(a)(1) (unamended). The second priority was ''the protection of public health, safety, and general welfare from adverse effects of coal mining practices.'' 30 U.S.C. 1233(a)(2) (unamended). The third priority was ''the restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices * * *.'' 30 U.S.C. 1233(a)(3) (unamended).

As the law required, the Fund was divided into State or Tribal and Federal shares. Each State or Indian tribe with a Federally approved reclamation plan was entitled to receive 50 percent of the reclamation fees collected annually from coal operations conducted within its borders. The ''Secretary's share'' of the Fund consisted of the remaining 50 percent of the reclamation fees collected annually and all other receipts to the Fund. The Secretary's share was allocated into three shares as required by the 1990 amendments to SMCRA. *See* Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, 104 Stat. 1388, § 6004. First, we allocated 40% of the Secretary's share to ''historic coal'' funds to increase reclamation grants to States and Indian tribes for coal reclamation. However, all the funds which were allocated may not have been appropriated. Second, we allocated 20% to the Rural Abandoned Mine Program (RAMP), operated by the Department of Agriculture, which was authorized to receive AML funding but has not been appropriated AML funds since the mid 1990's. Last, SMCRA required us to allocate 40% to ''Federal expense'' funds to provide grants to States for emergency programs that abate sudden dangers to public health or safety needing immediate attention, to increase reclamation grants in order to provide a minimum level of funding to State and Indian tribal programs with unreclaimed coal sites, to conduct reclamation of emergency and high-priority coal sites in areas not covered by State and Indian tribal programs, and to fund our operations that administer Title IV of SMCRA.

States with an approved State coal regulatory program under Title V of SMCRA and with eligible coal mined lands may develop a State program for reclamation of abandoned mines. The Secretary may approve the State reclamation program and fund it. At the time the 2006 amendments were enacted, 23 States received annual AML grants to operate their approved reclamation programs. Three Indian tribes (the Navajo, Hopi and Crow Indian tribes) without approved regulatory programs have received grants for their approved reclamation programs as authorized by section 405(k) of SMCRA.

Before the 2006 amendments, only a State or Indian tribe was authorized to certify that it had addressed all known coal problems within the State or on Indian lands within its jurisdiction. These certified States and Indian tribes were able to use AML grant funds to abate the impacts of mineral mining and processing. SMCRA established the following priorities for the certified programs:

(1) The protection of public health, safety, general welfare, and property from extreme danger of adverse effects from mineral mining and processing practices.

(2) The protection of public health, safety, and general welfare from adverse effects of mineral mining and processing practices.

(3) The restoration of land and water resources and the environment previously degraded by the adverse effects of mineral mining and processing practices.

30 U.S.C. 1240a(c). Certified States and Indian tribes could also use these funds to improve or construct utilities adversely affected by mineral mining and to construct public facilities in communities impacted by coal or mineral mining or processing. 30 U.S.C. 1240a(e). Certified States and Indian tribes could also use these funds for activities or construction of specific public facilities related to the coal or minerals industry in areas impacted by coal or minerals development. 30 U.S.C. 1240a(f).

In contrast, uncertified States and Indian tribes could use AML grant funds on noncoal projects only to abate extreme dangers to public health, safety, general welfare, and property that arose from the adverse effects of mineral mining and processing and only at the request of the Governor or the governing body of the Indian tribe. 30 U.S.C. 1239.

The minimum program funding level provided additional grant funding to uncertified States and Indian tribes so that each reclamation program would receive enough annual AML funding to support a viable program. Before the 2006 amendments, SMCRA set the minimum program level at $2 million. 30 U.S.C. 1232(g)(8) (as amended by the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, § 6004). However, appropriations have generally only funded the minimum program level at $1.5 million. *See, e.g.*, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006, Pub. L. 109–54, 119 Stat. 513 (2005) (''[G]rants to minimum program States will be $1,500,000 per State in fiscal year 2006.''). The Federal Fiscal Year runs from October 1 through September 30, so that FY 2006 is October 1, 2005, through September 30, 2006. SMCRA did not mandate a particular share of the Fund be used to support the minimum program, and we chose to use moneys from the Federal expenses share of the Fund for this purpose.

Before the 2006 amendments, States and Indian tribes were allowed to deposit up to 10 percent of their State or Tribal share and 10 percent of their historic coal share funds into set-aside accounts for either future coal reclamation or acid mine drainage treatment programs or both. 30 U.S.C. 1232(g)(6) (as amended by the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, § 6004). In addition, uncertified States and Indian tribes were allowed to spend up to 30% of their funds on water supply projects that protect, repair, replace, construct, or enhance water supply facilities adversely affected by coal mining practices. 30 U.S.C. 1233(b)(1) (as amended by the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, § 6005).

*C. How did the 2006 amendments change these programs?*

The Surface Mining Control and Reclamation Act Amendments of 2006 were signed into law as part of the Tax Relief and Health Care Act of 2006, on December 20, 2006. Pub. L. 109–432. The 2006 amendments revise Title IV of SMCRA to make significant changes to the reclamation fee and the AML program. The changes are summarized as follows:

• OSM's reclamation fee collection authority is extended through September 30, 2021. The statutory fee rates are reduced by 10 percent from the current levels for the period from October 1, 2007, through September 30, 2012. The fee rates are reduced by an additional 10 percent from the original levels for the period from October 1,

2012, through September 30, 2021. 30 U.S.C. 1232(a).

• The Fund allocation formula is changed. Beginning October 1, 2007, certified States will no longer be eligible to receive State share funds. 30 U.S.C. 1231(f)(3)(B). Instead, amounts which would have been distributed as State share for fee collections for certified States will be distributed as historic coal funds. 30 U.S.C. 1240a(h)(4). The RAMP share is eliminated. *See* 30 U.S.C. 1232(g). The historic coal allocation is further increased by the amount that previously was allocated to RAMP. 30 U.S.C. 1232(g)(5).

• Distributions of annual fee collections are made outside of the appropriations process. Once fully phased in, most fee collections will go to States and Indian tribes in annual mandatory distributions. Mandatory distributions from the Fund for uncertified States and Indian tribes include the State or Tribal share of all fees collected for coal produced the previous fiscal year, historic coal funds allocated from previous fiscal year production and also transferred from collections for certified States and Indian tribes for the previous fiscal year, and minimum program make up funding. 30 U.S.C. 1232(g)(1), (g)(5), and (g)(8)(A). These mandatory distributions are phased in at 50 percent for FY 2008 and FY 2009, and 75 percent for FY 2010 and FY 2011; full funding will be reached in FY 2012. 30 U.S.C. 1231(f)(5). After the end of the fee collection period, mandatory distributions of money from the Fund for FY 2023 and subsequent years will continue from balances in the Fund at the same level as FY 2022 to the extent funds are available. 30 U.S.C. 1231(f)(2)(B).

• Certified States and Indian tribes will receive mandatory distributions of Treasury funds in lieu of the State and Tribal share they will no longer be eligible to receive. 30 U.S.C. 1240a(h)(2). This mandatory distribution will be phased in at 25 percent for the first year, 50 percent for the second year, 75 percent for the third year, and fully distributed in the fourth year and thereafter. 30 U.S.C. 1240a(h)(3)(B). These funds may be used to address coal problems that arise after certification and for other purposes.

• All States and Indian tribes with approved reclamation plans are paid amounts equal to their unappropriated prior balance of State and Tribal share funds from fees collected on coal produced before October 1, 2007. 30 U.S.C. 1240a(h)(1)(A)(i). Payments will be made in seven equal annual installments beginning in FY 2008. 30 U.S.C. 1240a(h)(1)(C). Payments are mandatory distributions from Treasury funds. These payments must be used by uncertified States and Indian tribes for the purposes of section 403 of SMCRA. 30 U.S.C. 1240a(h)(1)(D)(ii). These payments must be used by certified States and Indian tribes for purposes established by the State legislature or Tribal council, with priority given for addressing the impacts of mineral development. 30 U.S.C. 1240a(h)(1)(D)(i). Amounts in the Fund previously designated as State or Tribal share equal to the unappropriated balance payments will be transferred to historic coal funds as payments are made and used for reclamation grants in FY 2023 and thereafter. 30 U.S.C. 1240a(h)(4).

• The minimum funding level for each State or Indian tribe with an approved reclamation plan and unfunded high priority coal reclamation problems is increased to $3 million. 30 U.S.C. 1232(g)(8)(A). This funding is also a mandatory distribution. However, like the rest of the distributions from the Fund, these distributions will be phased in at 50 percent for FY 2008 and FY 2009, and 75 percent for FY 2010 and FY 2011; full funding will be reached in FY 2012. 30 U.S.C. 1231(f)(5).

• The States of Tennessee and Missouri are each authorized to receive minimum program make up funding for their approved State reclamation programs even if they do not meet other requirements, such as having an approved coal regulatory program. 30 U.S.C. 1232(g)(8)(B).

• Other than for minimum program make up funding, expenditures from the Secretary's share must be appropriated by Congress. 30 U.S.C. 1231(d)(a). These uses for Federal expense funding include the emergency reclamation program, Federal reclamation programs, the Watershed Cooperative Agreement Program, and our AML administrative expenses.

• The limit on set aside funding for acid mine drainage (AMD) treatment programs is increased from 10 percent to 30 percent of State or Tribal share funds and historic coal funds. 30 U.S.C. 1232(g)(6). In addition, States and Indian tribes are no longer required to get our approval for AMD plans. *Id.* Set aside funding for future coal reclamation is no longer authorized. *Id.* The previous cap of 30 percent for water supply restoration projects is eliminated. 30 U.S.C. 1233(b).

• There are only three AML coal reclamation priorities because the previous priorities 4 and 5 have been removed. 30 U.S.C. 1233(a). Also, ''general welfare'' is eliminated as a component of priorities 1 and 2. 30 U.S.C. 1233(a)(1) and (a)(2). OSM must now ensure strict compliance with the coal priorities until the State or Indian tribe is certified. 30 U.S.C. 1232(g)(2). States and Indian tribes may initiate Priority 3 reclamation projects before completing all Priority 1 and 2 projects only if the Priority 3 reclamation is performed in conjunction with a Priority 1 or 2 project. 30 U.S.C. 1232(g)(7). Priority 3 lands and waters adjacent to past, present, and future Priority 1 and 2 project sites may be reclassified to Priority 1 or 2. 30 U.S.C. 1233(a)(1)(B)(ii) and 1233(a)(2)(B)(ii).

• The previous prohibition on filing a lien against the beneficiary of an AML reclamation project if the person owned the surface before May 2, 1977, is eliminated. 30 U.S.C. 1238(a). The automatic lien waiver is now extended to all landowners who did not consent to, participate in, or exercise control over the mining operations that necessitated the reclamation.

• We must approve amendments to the AML inventory system. 30 U.S.C. 1233(c).

• We may certify that a State or Indian tribe has completed coal reclamation without prior request from the State or Indian tribe. 30 U.S.C. 1240a(a)(2).

• There is a cap of $490 million on total annual Treasury funding under this legislation. 30 U.S.C. 1232(i)(3)(A). This cap limits payments to States and Indian tribes under 30 U.S.C. 1240a(h) and the payments to the CBF, 1992 Benefit Plan, and the 1993 Benefit Plan, collectively known as the ''UMWA health care plans,'' under 30 U.S.C. 1232(h) and 1232(i)(1).

• Subject to certain limitations, to the extent payments from premiums and other sources do not meet the financial needs of the UMWA health care plans, all estimated Fund interest earnings for each fiscal year must be transferred to these plans. 30 U.S.C. 1232(h). The unappropriated balance of the RAMP allocation as of December 20, 2006, is also available for transfer to the UMWA health care plans. 30 U.S.C. 1232(h)(4)(B). These additional transfers to the CBF began in FY 2007, while transfers to the 1992 and 1993 Benefit Plans began in FY 2008. 30 U.S.C. § 1232(h)(1). Transfers to the 1992 and 1993 Benefit Plans are phased in, with transfers in FY 2008–2010 limited to 25%, 50%, and 75% respectively, of the amounts that would otherwise be transferred. 30 U.S.C. 1232(h)(5)(C). If necessary to meet their financial needs, the UMWA health care plans are also entitled to payments from

unappropriated amounts in the Treasury, subject to the overall $490 million cap on all transfers from the Treasury under the 2006 amendments. 30 U.S.C. 1232(i)(1)(B) and (i)(3)(A). All interest earned by the Fund before December 20, 2006, and not previously transferred to the CBF is set aside in a reserve fund that will be used to make payments to the UMWA health care plans in the event that their financial needs exceed the annual cap. 30 U.S.C. 1232(h)(4)(A).

- The 2006 amendments removed the expiration date for remining incentives initially authorized on October 24, 1992, when SMCRA was amended to include a new section 510(e) that created an exemption from the section 510(c) permit-block sanction for remining operations and a new section 515(b)(20)(B) that provided incentives for certain eligible remining operations in the form of reduced revegetation responsibility periods (2 years in the East and 5 years in the West). Energy Policy Act of 1992, Pub. L. 102–486, § 2503. Until the 2006 amendments, those remining incentives had a statutorily defined expiration date of September 20, 2004, under 510(e) of SMCRA. *Id.*
- The 2006 amendments authorized us to develop regulations to promote remining of eligible land under section 404 in a manner that leverages the use of amounts from the Fund to achieve more reclamation. 30 U.S.C. 1244
- Upon our approval, an Indian tribe may develop ''a tribal program under section 503 [of SMCRA] regulating in whole or in part surface coal mining and reclamation operations on reservation land under the jurisdiction of the Indian tribe using the procedures of section 504(e).'' 30 U.S.C. 1300(j).

**II. Outreach, Guidance, and Comments**

Since the enactment of the 2006 amendments, we have notified potentially affected parties of the statutory amendments and solicited comments on issues related to the 2006 amendments. In January and September 2007, we notified all fee payers in writing of the fee rate changes. In January, February, and May 2007, we met with representatives of States and Indian tribes with approved reclamation programs at meetings hosted by the Interstate Mining Compact Commission (IMCC) and the National Association of Abandoned Mine Land Programs (NAAMLP) to notify the States and Indian tribes of the 2006 amendments' changes to SMCRA and to seek their input on the amendments. The IMCC and NAAMLP subsequently submitted joint written comments on specific provisions of the amendments. The IMCC and the NAAMLP, among others, raised the following major issues in their written comments.

First, the commenters proposed that we allow individual States and Indian tribes to choose between receiving Treasury moneys under section 411(h) through a traditional grant or by a ''direct payment mechanism.'' The commenters recognized that we might prefer to use grants to pay the section 411(h) funds rather than some type of ''direct distribution of cash from the Treasury.'' However, the commenters noted that SMCRA does not directly address this issue and stated that the ''Secretary has the discretion to design a payment mechanism that meets the needs of the States and tribes.'' They urged us to develop some type of ''direct payment mechanism'' similar to that used to pay mineral royalties to States under the Mineral Leasing Act. The commenters stated that the State legislatures and Tribal councils will ensure States and Indian tribes use the funds legally and appropriately under SMCRA and State and Tribal contracting law and that Federal audits will scrutinize project selection and expenditures.

Second, the commenters expressed concern that States and Indian tribes at the minimum program funding level would receive less than $3 million until FY 2012. The commenters pointed out that uncertified States that receive funding at the ''minimum program'' level often have serious Priority 1 and 2 abandoned coal mine problems. They also discussed the fact that SMCRA historically guaranteed States and Indian tribes at least $2 million, but that this minimum funding level was rarely, if ever, met. The IMCC and NAAMLP asserted that the $3 million floor amount in section 402(g)(8)(A) only mandates that we cannot spend more than $3 million from the Federal expense funds. In addition, they contend that section 401(f)(5)(B) of SMCRA requires us to phase in only those Federal expense funds that we might provide in excess of the $3 million floor level of funding provided for in section 402(g)(8)(A).

Third, the commenters specifically objected to any limitations that would prohibit uncertified States and Indian tribes from using prior balance replacement funds from Treasury under section 411(h)(1) to abate high priority noncoal hazards or for placement in an AMD set aside account. The commenters expressed concern that requiring uncertified States and Indian tribes to use prior balance replacement funds for coal reclamation only would prevent those States and Indian tribes from using the moneys to reclaim equally or even more dangerous hazards associated with noncoal mining and hinder the treatment of AMD. In addition, they pointed out that the prior balance replacement funds are received in place of State or Tribal share funds from reclamation fees previously collected in each State and on Indian lands that Congress never appropriated for distribution to the respective States and Indian tribes. Because uncertified States and Indian tribes are permitted to use section 402(g)(1) funds for noncoal reclamation and for AMD set-aside funds, the commenters maintain that they should be allowed to use the prior balance replacement funds for the same purposes.

The IMCC and NAAMLP also raised many other issues in their comments. They suggested that the first certified in lieu payments should be for FY 2009. They suggested that the terms ''adjacent'' and ''in conjunction'' should be applied to AML Priority decisions using simple definitions without additional monetary or timing criteria. They urged OSM to make fund distributions as early in the FY as possible.

We considered all the comments we received in developing this proposed rule.

In order to facilitate distribution of funds for FY 2008, as required in the 2006 amendments, the Director of OSM issued written guidance in December, 2007. To the extent feasible, we have restated and expanded upon the content of that guidance in this proposed rule. We intend to make that December 2007 written guidance part of the docket for this rulemaking to be available for public inspection.

The December 2007 written guidance was based in part on a December 2007 memorandum opinion (M opinion), from the Department of the Interior, Office of the Solicitor, which analyzed three issues related to AML funding. *See* Funding to States and Indian Tribes Under the Surface Mining Control and Reclamation Act of 1977, as Amended by the Tax Relief and Health Care Act of 2006, M–37014 (December 5, 2007). In this M-opinion, the Office of the Solicitor advised us that:

- We are required to use grants to pay prior balance replacement funds and certified in lieu funds to eligible States and Indian tribes under sections 411(h)(1) and (h)(2) of SMCRA;
- Uncertified States and Indian tribes may not use prior balance replacement funds that they receive under section 411(h)(1) of SMCRA for noncoal

reclamation and for the AMD set aside authorized by section 402(g)(6); and

• The minimum program make up funds that eligible uncertified States and Indian tribes are entitled to receive under section 402(g)(8)(A) of SMCRA are subject to the four year phase-in provision of section 401(f)(5)(B).

**III. Description of the Proposed Rule**

This proposed rulemaking seeks to revise our regulations to be consistent with all of the revisions to SMCRA contained in the 2006 amendments, except for those provisions relating to the remining incentives provisions leveraging amounts from the Fund. The remining incentives provisions that leverage amounts from the Fund are the subject of a separate rulemaking published on May 1, 2008, at 73 FR 24120.

Generally, this rulemaking sets forth proposed standards and procedures for the coal reclamation fee, the Fund, and the AML program. This proposed rule includes extensive proposals for long term operations of the amended Title IV program, including provisions of the 2006 amendments that will become effective at later dates. We are also taking advantage of this rulemaking opportunity to propose other changes that we believe are needed to update and clarify related Parts of our existing regulations. Throughout this proposed rule, the terms ''money'' and ''moneys'' are interchangeable with the terms ''fund'' or ''funds,'' but not with the term ''Fund,'' as defined in proposed § 700.5.

The proposed changes generally fall into three categories:

• Align our existing regulations to be consistent with the 2006 amendments to SMCRA as interpreted by the M-opinion;

• Use plain English to make the regulations easier to understand where no substantive change is intended; and

• Provide further guidance and clarification on implementation of the 2006 amendments where appropriate or needed.

A detailed discussion of all of the proposed revisions follows.

*Part 700—General*

Definitions (§ 700.5)

We are proposing to revise the definitions in § 700.5 in several ways. First, we are proposing to add two new definitions (''AML'' and ''AML inventory''). The addition of these two definitions will improve the clarity of the proposed regulations contained in this rulemaking.

Second, we are moving six existing definitions (''eligible lands and water,'' ''emergency,'' ''extreme danger,'' ''left or abandoned in either an unreclaimed or inadequately reclaimed condition,'' ''project,'' and ''reclamation activity'') to § 700.5 because these terms apply to all of the regulations in Chapter VII of Title 30 of the Code of Federal Regulations. These terms were previously codified in § 870.5, which only applies to regulations related to AML reclamation fee collection. We are not proposing any substantive changes to the text of the definitions of these six terms. We are, however, correcting a mistake in the definition of eligible lands and water. The existing definition states, in part, that ''[f]ollowing certification of the completion of all known coal problems, eligible lands and water for noncoal reclamation purposes are those sites that meet the eligibility requirements specified'' in § 874.14 of this chapter. The reference to § 874.14 was incorrect. The correct reference is § 875.14—Eligible lands and water subsequent to certification. In addition, we propose to reword two definitions (''eligible lands and water,'' and ''left or abandoned in either an unreclaimed or inadequately reclaimed condition'') using plain English.

Third, to eliminate some redundancy between two definitions, we combined two definitions from § 870.5 (''Indian reclamation program'' and ''State reclamation program'') into one definition in § 700.5 (''reclamation program''). The substance of the definition did not change.

Fourth, we moved the definition of ''expended'' from § 870.5 to § 700.5. In order to make the definition consistent with the entire chapter, we removed the existing limitation that it only applies to costs for reclamation.

Last, we are proposing to expand the definition of ''Fund'' in § 700.5. Previously, this term was defined slightly differently in both §§ 700.5 and 870.5. Under the proposed rule, the definition of this term in § 700.5 will be expanded to include additional information that was contained in § 870.5 (''Abandoned Mine Reclamation Fund or Fund''). We believe this will eliminate any confusion that may have resulted from having different terminology and definitions to describe the same source of money in two Parts of the regulations.

*Part 724—Requirements for Permits and Permit Processing*

Payment of Penalty (§ 724.18)

We propose to revise § 724.18(d) to update the references in that section to reflect our proposal to split existing § 870.15 into separate sections within part 870 and to update information on how to find the interest rate for late payments.

*Part 773—Requirements for Permits and Permit Processing*

Unanticipated Events or Conditions at Remining Sites (§ 773.13(a)(2))

On October 24, 1992, SMCRA was amended to include a new section 510(e) that created an exemption from the section 510(c) permit-block sanction for remining operations. At that time section 510(e) had a statutorily defined expiration date of September 30, 2004. Because the 2006 amendments removed the expiration date, we are revising § 773.13(a)(2) to reflect continued applicability of the provision.

*Part 785—Requirements for Permits for Special Categories of Mining*

Lands Eligible for Remining (§ 785.25(c))

On October 24, 1992, SMCRA was amended to include a new section 515(b)(20)(B) that provided incentives for certain eligible remining operations in the form of reduced revegetation responsibility periods (2 years in the East and 5 years in the West). Those remining incentives had a statutorily defined expiration date of September 30, 2004, under section 510(e) of SMCRA. Because the 2006 amendments removed the expiration date, we propose to remove paragraph (c) to reflect the continued applicability of this section.

*Part 816—Permanent Program Performance Standards—Surface Mining Activities*

Revegetation: Standards for Success (§ 816.116)

On October 24, 1992, SMCRA was amended to include a new section 515(b)(20)(B) that provided incentives for certain eligible remining operations in the form of reduced revegetation responsibility periods (2 years in the East and 5 years in the West). Those remining incentives had a statutorily defined expiration date of September 30, 2004, under section 510(e) of SMCRA. Because the 2006 amendments removed the expiration date, we propose to revise § 816.116(c)(2)(ii) and (c)(3)(ii) to reflect continued applicability of the provisions. We also reworded this section using plain English.

*Part 817—Permanent Program Performance Standards—Underground Mining Activities*

Revegetation: Standards for Success (§ 817.116)

On October 24, 1992, SMCRA was amended to include a new section 515(b)(20)(B) that provided incentives for certain eligible remining operations in the form of reduced revegetation responsibility periods (2 years in the East and 5 years in the West). Those remining incentives had a statutorily defined expiration date of September 30, 2004, under section 510(e) of SMCRA. Because the 2006 amendments removed the expiration date, we propose to revise § 817.116(c)(2)(ii) and (c)(3)(ii) to reflect continued applicability of the provisions. We also reworded this section using plain English.

*Part 845—Civil Penalties*

Use of Civil Penalties for Reclamation (§ 845.21)

We propose to revise § 845.21(b)(1) to reflect our proposal to move the definition of ''emergency'' from § 870.5 to § 700.5 of this chapter.

*Part 846—Individual Civil Penalties*

Payment of Penalty (§ 846.18)

We propose to revise § 846.18(d) to update the references in that section to reflect our proposal to split existing § 870.15 into separate sections within Part 870 and to update information on how to find the interest rate for late payments.

*Part 870—Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting*

Part 870 describes the requirements and process for you, the coal mine operator, to report coal production and to pay the AML reclamation fee.

Scope (§ 870.1)

We propose to add coal production reporting to this paragraph, because this is a major topic of this Part, and also to change the term ''Abandoned Mine Reclamation Fund'' to ''Fund'' to be consistent with our definition in proposed § 700.5.

Definitions (§ 870.5)

We propose to correct a defect in the Part 870 definitions section. The current § 870.1 specifies that the scope of Part 870 is limited to the procedures for the collection of reclamation fees, but existing § 870.5 provides that the definitions apply to Parts 870 through 888. In order to correct this issue, we propose to revise § 870.5 to state that the definitions apply only to Part 870 and to move definitions unrelated to Part 870 to the regulations where they are used. As such, we moved 17 existing definitions out of this section. In addition, one definition (''OSM'') was essentially a duplicate of a preexisting definition in § 700.5; thus, we deleted that term from § 870.5. Any substantive changes made to the definitions are described in the preamble related to the section where the definitions are moved.

As described in the preamble discussion regarding proposed revisions to § 700.5, six definitions from § 870.5 that apply to multiple Parts of the chapter were moved to § 700.5 (''eligible lands and water,'' ''emergency,'' ''extreme danger,'' ''left or abandoned in either an unreclaimed or inadequately reclaimed condition,'' ''project,'' and ''reclamation activity''). Two definitions from existing § 870.5 (''Indian reclamation program'' and ''State reclamation program'') were combined into one definition (''reclamation program'') and were moved to proposed § 700.5. In addition, because ''Fund'' or ''Abandoned Mine Reclamation Fund'' was defined in both existing §§ 700.5 and 870.5, we deleted the definition in existing § 870.5 and merged the two definitions into the one proposed at § 700.5.

Furthermore, we propose to move four definitions (''allocate,'' ''Indian Abandoned Mine Reclamation Fund or Indian Fund,'' ''reclamation plan,'' and ''State Abandoned Mine Reclamation Fund or State Fund'') to Part 872. One of these terms (''reclamation plan'') is defined again in §§ 874.5, 875.5, 879.5, 880.5, 884.5, 885.5, 886.5, and 887.5, but it is defined first and discussed in greater detail in the preamble discussion of § 872.5. We also propose to move one definition (''qualified hydrologic unit'') to proposed § 876.12(c), and one definition (''permanent facility'') to proposed § 879.11(a)(2). We propose to delete two definitions: one (''OSM'') which is already defined in existing § 700.5; and one (''agency'') which is no longer used because of plain English rewording.

Information Collection (§ 870.10)

We propose to reword this paragraph using plain English and to use the current format approved by the Office of Management and Budget (OMB). It describes OMB's approval of information collections in Part 870, our use of that information, and the estimated reporting burden associated with those collections.

Fee Rates (§ 870.13)

The 2006 amendments both extended the AML reclamation fee for 14 years and provided for a two-step reduction in the amount of the fee rate. 30 U.S.C. 1232(a). We propose revising § 870.13 to conform these regulations to the changes made by the 2006 amendments.

First, we propose revising paragraph (a) of § 870.13, which sets forth the reclamation fee rates per ton for coal produced by surface, underground, and lignite mining that were in effect from August 3, 1977, until September 30, 2007. We also propose to indicate that the rates expired on September 30, 2007, rather than September 30, 2004, as formerly provided in the regulations. We propose to retain these expired rates for historical purposes and for use in future audits of production from the years in which those rates applied.

We propose to delete the existing paragraph (b), which set out the procedure for us to set fees and the first fee rate in the event that the AML reclamation fee was not extended. As mentioned in the section of this preamble entitled ''Background on the Reclamation Fee and the Abandoned Mine Land Program'', Congress extended the fee before it expired. Thus, paragraph (b) never came into effect, and the fee extension in the 2006 amendments has made it obsolete.

In its place, we propose to add a new paragraph (b), with a table that sets out the fee rates established by the 2006 amendments for coal produced in the period from October 1, 2007, through September 30, 2012. The new fee rates per ton for surface and underground coal and lignite are each reduced by 10% from the previous rates. Similarly, we propose a new paragraph (c) with a table showing the fee rates reduced by an additional 10% of the original rates for coal produced in the period from October 1, 2012, through September 30, 2021.

SMCRA and the 2006 amendments specifically prescribe fee rates for surface, underground, and lignite coal mining. As in the previous regulation, we propose to show rates for in situ mining, which means gasification of the coal at the mine. We continue to consider in situ mining to be covered by SMCRA because it is included in the definition of ''surface coal mining operations'' in section 701(28) of SMCRA and is therefore subject to the AML reclamation fee. As we have done in the past, when developing these proposed regulations, we classified in situ mining as underground mining (*see* § 785.22 and Part 828). In these proposed regulations, we continue to

include a separate paragraph for the fee rates for in situ mining in order to clarify that the fees are set at the same rate as the fees for underground mining.

Determination of Percentage-Based Fees (§ 870.14)

We propose rewording this paragraph using plain English. We also propose updating the reference in paragraph (b) to conform this provision to our proposed revisions of existing § 870.15.

Reclamation Fee Payment (§ 870.15)

We propose to break out the information from the existing § 870.15 into four separate sections to better organize this varied material and make it easier to find and understand. Paragraph (a) was reworded using plain English. We divided existing paragraph (b) into 3 new paragraphs (b), (c), and (d) within proposed § 870.15. This division separates these related, but distinct, topics for easier understanding. We also reworded these provisions using plain English. The remaining paragraphs (existing paragraphs 870.15(c) through (g)) were moved: existing paragraphs (c), (f), and (g) related to late payments were moved to proposed § 870.21; existing paragraph (d) related to acceptable payment methods was moved to proposed § 870.16; existing paragraph (e) related to the consequences of noncompliance was moved to proposed § 870.23.

Acceptable Payment Methods (§ 870.16)

We propose to move the contents of existing § 870.16 on production records to new § 870.22 to better organize related topics. In turn, we propose to move the contents of existing § 870.15(d) to proposed § 870.16, and reword those provisions using plain English. The proposed reorganization will keep information related to payment methods immediately after the fee payment information contained in § 870.15.

Filing the OSM–1 Form (§ 870.17)

This section proposes to expand on the existing § 870.17, which covers the electronic filing of the coal reclamation fee report, known as the OSM–1 Form. We kept existing § 870.17 and made it proposed § 870.17(a). However, we added a paragraph (b) on filing a paper OSM–1 Form. Now, under the proposed rule, both options for filing the OSM–1 Form are listed together in the same section.

In addition, section 402(c) of SMCRA requires that ''all operators of coal mine operations shall submit a statement of the amount of coal produced during the calendar quarter, the method of coal removal and the type of coal, the accuracy of which shall be sworn to by the operator and notarized.'' 30 U.S.C. 1232(c). Although SMCRA states that your OSM–1 Form is to be notarized, we believe that 28 U.S.C. 1746 allows us to accept the OSM–1 Form along with a statement made under penalty of perjury that the information contained in the form is true and correct. Section 1746 provides that any matter required to be sworn may with like force be established by an unsworn written declaration consistent with the statute. Currently, if you file your report electronically on our Web site, we allow you to choose whether to keep a paper notarized copy or to make an unsworn statement using acceptable certification language that the system provides. *See also* 66 FR 28634. We are adding a similar unsworn statement option in paragraph (b) to reduce your burden if you choose to file your OSM–1 Form on paper.

General Rules for Calculating Excess Moisture (§ 870.18)

The only change we propose to make in this section is to update a reference in paragraph (b) to reflect our proposed division of existing § 870.15 into four sections. We are not considering any substantive changes to this section. We only intend to make those changes needed to correct any cross-references to other sections that may be altered by this rulemaking.

Late Payments (§ 870.21)

We propose to move this information from the existing paragraphs § 870.15(c), (f), and (g) to new § 870.21 and reword these provisions using plain English. This reorganization will make proposed § 870.15 more focused on the payment of the reclamation fee while grouping the specific information on the interest and penalties that we may charge on delinquent reclamation fees into this new section.

Maintaining Required Production Records (§ 870.22)

We propose to move the information in the existing § 870.16 to this new section for better organization because it allows us to group the payment and reporting sections together. We also propose to reword this section using plain English.

Consequences of Noncompliance (§ 870.23)

We propose to move existing § 870.15(e)(1)–(5) to this new section. We believe this section should be separated from the late payments section because it also applies to the failure to comply with the record maintenance provisions. In addition, we reworded this section using plain English.

*Part 872—Moneys Available to Eligible States and Indian Tribes*

Our proposed revision of Part 872 describes the moneys that make up the Fund and other sources of money, including otherwise unappropriated funds in the U.S. Treasury as specified by the 2006 amendments, that are available to you, the eligible States and Indian Tribes with approved reclamation programs. This part also describes how we will convey these funds to you and what you may use them for.

We are proposing regulations to address the changes to SMCRA that the 2006 amendments made. In addition, we are proposing to divide, remove, and renumber parts of existing §§ 872.11(a) through 872.11(c) and § 872.12, change headings, add new sections and headings as appropriate, and more clearly describe the different types of funds available under this Part. We propose these additional changes to make the regulations easier to read and understand. Each proposed change is described below in more detail.

What does this Part do? (§ 872.1)

In this section, we explain that the purpose of Part 872 is to set forth the responsibilities for administering reclamation programs and the procedures for managing funds used to finance these programs. We propose to change the section heading to ''What does this Part do?'', to reword the section using plain English, and to remove a reference to the Fund, instead referring more generically to ''funds.'' We believe removing the reference to the Fund recognizes that the 2006 amendments provide funds to you both from the Fund and from otherwise unappropriated funds of the U.S. Treasury. Throughout this Part, the terms ''money'' and ''moneys'' are interchangeable with the terms ''fund'' or ''funds,'' but not with the term ''Fund,'' as defined in proposed § 700.5.

Definitions (§ 872.5)

We propose adding § 872.5 to contain definitions pertinent to Part 872. This proposed section contains four definitions (''allocate,'' ''Indian Abandoned Mine Reclamation Fund or Indian Fund,'' ''reclamation plan,'' and ''State Abandoned Mine Reclamation Fund or State Fund'') moved from existing § 870.5 and two new definitions (''award'' and ''distribute''). As described below, we also propose to

revise the existing definitions that were moved from § 870.5 and to use plain English for these definitions.

First, we propose to revise the definitions of ''Indian Abandoned Mine Reclamation Fund or Indian Fund'' and ''State Abandoned Mine Reclamation Fund or State Fund'' to include references to Parts 885 and 886. Those Parts address grants for certified and uncertified States and Indian tribes.

Second, we propose to revise the definition of ''reclamation plan'' to refer to States and Indian tribes and to have the same meaning as ''State reclamation plan.'' As proposed, a ''reclamation plan or State reclamation plan'' means ''a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and Part 884 of this subchapter.'' Our definition makes ''reclamation plan'' and ''State reclamation plan'' interchangeable wherever those terms appear in this subchapter, recognizing that certain Parts still use ''State reclamation plan.'' We included a reference to section 405 of SMCRA to be consistent with its use of the term ''State reclamation plan'' as well. 30 U.S.C. 1235. Our proposed definition also is consistent with section 405(k) of SMCRA, which considers Indian tribes that have eligible lands under section 404 the same as States for the purposes of Title IV, except for the purposes of section 405(c). 30 U.S.C. 1235(k).

Next, we propose two changes to the definition of ''allocate.'' The revised definition now states that ''allocate'' means ''to identify moneys in our records at the time they are received by the Fund.'' We also added a statement to clarify that the allocation process identifies the type of funds or the specific State or Indian tribal share.

The definition of ''allocate'' is distinguishable from the new definitions of ''distribute'' and ''award'' that we propose to add. We define ''distribute'' as meaning ''to annually assign funds to a specific State or Indian tribe. After distribution, funds are available for award in a grant to that specific State or Indian tribe.'' We define ''award'' as meaning ''to approve our grant agreement authorizing you to draw down and expend program funds.''

We use the terms ''allocate,'' ''distribute,'' and ''award'' throughout Part 872 to describe the process that we follow to make funds available to States and Indian tribes. Our accounting process first *allocates* funds to a particular share (State and Tribal shares or historic coal funds, for example) as soon as we receive the collected fees. Next, we *distribute* funds annually after the end of each Federal FY to specific States and Indian tribes according to the statutory provisions and the regulations governing those funds (for example, we will follow proposed § 872.15 to distribute State share funds). After the funds are distributed, we *award* funds to States and Indian tribes in grants following the procedures of proposed Part 885 for certified States and Indian tribes and Part 886 for uncertified States and Indian tribes if and when they apply for such grants.

Information Collection (§ 872.10)

We propose to update this section and reword it using plain English. It describes the OMB's approval of information collections in Part 872, our use of that information, and the estimated reporting burden associated with those collections.

Where do moneys in the Fund come from? (§ 872.11)

This proposed section describes the funds we collect, recover, and otherwise receive that are the sources of revenue to the Fund. Here we propose to change the section heading to ''Where do moneys in the Fund come from?'' and to renumber existing §§ 872.11(a) through (a)(6) as §§ 872.11 through 872.11(f). We also reworded this section in plain English.

In addition, we propose to remove language from existing § 872.11(a)(6) (now renumbered as proposed § 872.11(f)) that makes interest earned after September 30, 1992, available for possible future transfer to the UMWA CBF under section 402(h) of SMCRA. The 2006 amendments to SMCRA added new provisions related to our payments to the UMWA health care plans. However, this rulemaking does not address those changes.

In addition, we propose to revise and reorganize the information in existing §§ 872.11(b), including paragraphs (b)(1) through (b)(8), into various other sections. Existing § 872.11(b)(1) is included in proposed §§ 872.14 and 872.15 on State share funds and § 886.20 on unused funds. Similarly, existing § 872.11(b)(2) is included in proposed §§ 872.17 and 872.18 on Tribal share funds and § 886.20 on unused funds. Existing § 872.11(b)(3) related to the RAMP program is moved to proposed § 872.20. Existing § 872.11(b)(4) is included in proposed §§ 872.21 and 872.22 on historic coal funds. Existing § 872.11(b)(5), as well as §§ 872.11(b)(7) and (b)(8), are moved to §§ 872.24 and 872.25 on Federal expense funds. Existing § 872.11(b)(6) is included in proposed §§ 872.26 and 872.27 on minimum program makeup funds. We propose to move existing § 872.11(c) to § 872.12(c). We propose to revise all these provisions to be consistent with the 2006 amendments and to reword them using plain English.

Where do moneys distributed from the Fund and other sources go? (§ 872.12)

We propose to change the heading of existing § 872.12 to ''Where do moneys distributed from the Fund and other sources go?'', and to reword the section using plain English. We also propose to add paragraph § 872.12(c) for information moved from existing § 872.11(c) and to make a conforming change. The conforming change involves the requirement in existing § 872.11(c) that States and Indian tribes use money deposited in their State or Indian Abandoned Mine Reclamation Funds to carry out their reclamation plans approved under Part 884 and projects approved under Part 888. On February 22, 1995, we removed Part 888, which related to special Indian land procedures, and replaced it with § 886.25, but did not change the cross-reference in existing § 872.11(c). 60 FR 9974. In § 872.12(c), we now propose to replace that cross-reference with a reference to proposed § 886.27, which is the proposed renumbering of existing § 886.25.

What money does OSM distribute each year? (§ 872.13)

We propose to add new § 872.13 to describe how we distribute moneys each year to States and Indian tribes under SMCRA, as revised by the 2006 amendments. We address each type of funding elsewhere in this proposed rule in greater detail.

Paragraph (a) lists the funds that we must distribute because they are not subject to prior Congressional appropriation. These distributions include State share (§ 872.14), Tribal share (§ 872.17), historic coal (§ 872.21), minimum program make up (§ 872.26), prior balance replacement (§ 872.29), and certified in lieu funds (§ 872.32).

Paragraph (b) explains we use fee collections for coal produced in the previous Federal FY on a net cash basis to calculate the annual distribution. In other words, collections from the most recent FY include any adjustments to fees collected in previous years. In order to meet our customer service obligation, we must quickly determine how much money we collected each FY so that we can complete the mandatory distribution of AML funds to the States and Indian tribes as early in the FY as possible. When we make adjustments to the fees collected in an earlier FY, we must add or subtract the changes from

collections for the year in which we actually receive them because we cannot go back and revise the prior year fee collection amounts and distributions that we have already made to the States and Indian tribes.

Paragraph (c) briefly states that we distribute Congressionally-appropriated Federal expense funds when the appropriation becomes available.

Last, paragraph (d) states that you may apply for funds any time after we distribute them. Certified States and Indian tribes will apply for grants using the procedures of Part 885 and uncertified States and Indian tribes will use the procedures of Part 886.

What are State share funds? (§ 872.14)

We are proposing to remove and replace the existing §§ 872.11(b) and 872.11(b)(1) with §§ 872.14 and 872.15. The new sections include language consistent with the 2006 amendments and are worded in plain English. Proposed § 872.14 replaces the first and second sentences of existing § 872.11(b)(1), which included provisions for what commonly have been called ''State share'' funds and that are provided for under section 402(g)(1)(A) of SMCRA. Specifically, this proposed provision explains that State share funds are 50 percent of the reclamation fees collected on coal mined in your State (excluding Indian lands) and allocated to you under section 402(g)(1)(A) of SMCRA for coal produced in the previous fiscal year.

How does OSM distribute and award State share funds? (§ 872.15)

Proposed § 872.15 explains how we distribute and award State share funds to you if you are eligible to receive them. Section 872.15(a)(1) replaces the third sentence of existing § 872(b)(1) and states that to be eligible to receive State share funds you must have and maintain an approved reclamation plan. Section 872.15(a)(2) adds that to be eligible you cannot be certified under section 411(a) of SMCRA because under section 401(f)(3)(B) of SMCRA, as revised by the 2006 amendments, certified States are ineligible to receive moneys from their State share of the Fund as of October 1, 2007. 30 U.S.C. 1231(f)(3)(B).

We did not distribute State share funds to certified States in the 2008 distributions because section 401(f)(3)(B) of SMCRA, as revised by the 2006 amendments, prohibits us from distributing any moneys from the Fund to certified States beginning on October 1, 2007. So, consistent with SMCRA, proposed § 872.13(a)(1) prohibits certified States from receiving any State share funds from the Fund after September 30, 2007.

In proposed § 872.15(b), we describe how we distribute and award State share funds if you meet the eligibility criteria of paragraph (a). In paragraph (b)(1), we include a table explaining the distributions, which will be phased-in under 401(d)(3) and (f) of SMCRA, as amended. 30 U.S.C. 1231(d)(3) and (f). Although section 402(g)(1) of SMCRA generally requires us, acting on behalf of the Secretary, to distribute annually to an uncertified State 50 percent of the reclamation fees we collect in that State for the previous FY without prior Congressional appropriation, section 401(f)(5) of SMCRA, as added by the 2006 amendments, requires us to phase-in the mandatory distribution of these funds. 30 U.S.C. 1231(f)(5)(B). As a result, for FY 2008 and FY 2009, which begin on October 1, 2007, and October 1, 2008, respectively, we will distribute to each uncertified State only 50 percent of the State share allocated to it. Because the State share is 50 percent of the reclamation fees collected on production in that State, for FY 2008 and FY 2009, uncertified States will receive only 25 percent of the reclamation fees collected on coal produced in their State (a 50 percent phase-in of the 50 percent in reclamation fees for the State share). Likewise, State shares that we distribute in FY 2010 and FY 2011, which begin October 1, 2009, and October 1, 2010, respectively, will be 75 percent of the 50 percent share, which is 37.5 percent of the reclamation fees collected on coal produced in that State. We will distribute to uncertified States their full 50 percent State share from the Fund each year beginning with FY 2012, which starts on October 1, 2011, and lasting through FY 2022, which ends on September 30, 2022. In FY 2023, we expect to distribute to uncertified States all moneys remaining in their State share of the Fund.

Proposed § 872.15(b)(2) explains that we will continue to award funds under this paragraph in grants in accordance with Part 886. Awarding State share funds in grants is consistent with section 402(g)(1)(C) of SMCRA. 30 U.S.C. 1232(g)(1)(C). In addition, we note that many States were awarded State share funds in prior year grants, before the 2006 amendments. Those funds would continue to be subject to the provisions of Part 886.

What may States use State share funds for? (§ 872.16)

Proposed § 872.16 describes what you, the uncertified State, may use your State share grant funds for. You may only use them for the following purposes: (1) To reclaim coal lands and waters under § 874.12; (2) to restore water supplies under § 874.14; (3) to reclaim noncoal lands and waters under § 875.12 as requested by the Governor under section 409(c) of SMCRA; (4) to deposit into an acid mine drainage abatement and treatment fund under Part 876; and (5) to acquire land under § 879.11.

We note that the Fund consists mostly of reclamation fees we collect on each ton of coal produced. Although we have been collecting those fees under Title IV of SMCRA for almost 30 years, many abandoned coal problems remain to be addressed nationwide. The 2006 amendments emphasize the need to abate the country's remaining abandoned coal mine problems. *See, e.g.*, 30 U.S.C. 1232(g)(2) and 1240a(h)(1)(D)(ii). We believe that under the 2006 amendments, the Fund is to be used primarily to abate coal problems. We intend proposed § 872.16 to emphasize abandoned coal mine reclamation while continuing to allow uncertified States to abate Priority 1 noncoal hazards using moneys from the Fund in accordance with sections 402(g)(1)(A)(ii) and (C), 402(g)(6), and 409(b) and (c) of SMCRA.

What are Tribal share funds? (§ 872.17)

We are proposing to revise the first three sentences of existing § 872.11(b)(2) and divide it into §§ 872.17 and 872.18. Existing § 872.11(b)(2) includes provisions for what commonly have been called ''Tribal share'' funds that are provided by section 402(g)(1)(B) of SMCRA. The new sections include language to address the 2006 amendments and are worded in plain English.

In proposed § 872.17 we explain that ''Tribal share funds'' are moneys we distribute to you each year from your Tribal share of the Fund. Your Tribal share of the Fund is 50 percent of the reclamation fees we collect and allocate under 402(g)(1)(A) of SMCRA to you, the Indian tribe(s), in the Fund for coal produced in the previous fiscal year from the Indian lands in which you have an interest.

How does OSM distribute and award Tribal share funds? (§ 872.18)

This section largely is a duplicate of proposed § 872.15 except that it applies to Indian tribes and the Tribal share funds. So, the explanations in the preamble for § 872.15 are largely the same for distributing and awarding Tribal share funds under this section (including the phase-in provisions), and we will not repeat them. However, we

will discuss a few distinctions involving the distribution of Tribal share funds to Indian tribes.

As of October 1, 2007, under amended section 401(f)(3)(B) of SMCRA, States that are certified under section 411(a) are ineligible to receive State share funds. 30 U.S.C. 1231(f)(3)(B). This exclusion does not specifically say whether it applies to Indian tribes. However, to be consistent, we propose in § 872.18 to exclude all certified Indian tribes from receiving Tribal share funds after October 1, 2007.

At this time, only the Crow, Hopi, and Navajo Indian tribes have approved reclamation programs and have Tribal share funds. All three of those Indian tribes are certified under section 411(a) of SMCRA. Section 405(k) of SMCRA generally requires us to consider Indian tribes ''as a 'State' for the purposes of this title * * *.'' 30 U.S.C. 1235(k). So, because section 405(k) considers the Crow, Hopi, and Navajo Indian tribes as States for the purposes of Title IV and because they are certified under section 411(a), we must apply section 401(f)(3)(B) to those three Indian tribes. The Hopi and Navajo Indian tribes were certified before October 1, 2007, and they cannot receive Tribal share funds as of that date. 30 U.S.C. 1231(f)(3)(B), 1235(k). Therefore, we did not include Tribal share funds in their 2008 distributions. The Crow Indian tribe was uncertified as of December 17, 2007, which was when we made the 2008 AML distribution, so it received Tribal share funds. Since then, however, the Crow Indian tribe certified under section 411(a)(1) of SMCRA (73 FR 17247, April 1, 2008), so it cannot receive any additional Tribal share funds. Presently, there are no uncertified Indian tribes. However, at some future date, it is possible an uncertified Indian tribe could qualify for Tribal share funds.

What may Indian tribes use Tribal share funds for? (§ 872.19)

Proposed § 872.19 describes what you, the uncertified Indian tribe, may use your Tribal share grant funds for. You may only use Tribal share funds for the following purposes: (1) To reclaim coal lands and waters under § 874.12; (2) to restore water supplies under § 874.14; (3) to reclaim noncoal lands and waters under § 875.12 as requested by the governing body of the Indian tribe according to section 409(c) of SMCRA; (4) to deposit into an acid mine drainage abatement and treatment fund under Part 876; and (5) to acquire land under § 879.11. Our explanation in the preamble for § 872.16, which allows States to use State share funds for noncoal reclamation, also applies to Indian tribes' use of Tribal share funds. Therefore, we will not repeat it here.

What will OSM do with unappropriated AML funds currently allocated to the Rural Abandoned Mine Program? (§ 872.20)

We are proposing to renumber existing § 872.11(b)(3) as § 872.20 under the new heading ''What will OSM do with unappropriated AML funds currently allocated to the Rural Abandoned Mine Program?'' and to remove the existing provisions for transferring money from the Fund to the Rural Abandoned Mine Program (RAMP). The 2006 amendments removed the statutory provisions that provided funding for RAMP and created section 402(h)(4)(B) of SMCRA. That section requires us to take any funds that were allocated to RAMP but that were not appropriated before December 20, 2006, and set them aside for possible transfer to the UMWA health care plans. Proposed § 872.20 is consistent with this provision. Note that the only funds currently allocated to RAMP and affected by this section are those we collected and allocated between October 1, 2005, and December 20, 2006, because the RAMP balance on September 30, 2005, was reallocated to the Federal expense funds (section 402(g)(3) of SMCRA) by the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006, (Pub. L. 109–54, 119 Stat. 513 (2005)).

What are historic coal funds? (§ 872.21)

We are proposing to remove existing § 872.11(b)(4) and its subsections (b)(4)(i) and (ii) and to replace them with §§ 872.21 and 872.22. These new sections describe what commonly are known as ''historic coal funds.'' These sections address the 2006 amendments for historic coal funds and are worded in plain English.

Proposed § 872.21 describes historic coal funds and reflects the requirements of sections 401(d)(3), 401(f)(3)(A)(i), 401(f)(5)(B), 402(g)(5), 411(h)(1)(A)(ii), and 411(h)(4) of SMCRA, as revised by the 2006 amendments. 30 U.S.C. 1231(d)(3), 1231(f)(3)(A)(i), 1231(f)(5)(B), 1232(g)(5), 1240a(h)(1)(A)(ii), and 1240a(h)(4). Historic coal funds are part of the Fund. They are provided for under section 402(g)(5) of SMCRA based on the amount of coal produced before August 3, 1977, in your State or on Indian lands in which you have an interest. Section 401(d)(3) mandates that we distribute historic coal funds annually and that the distribution of historic coal funds is not subject to prior Congressional appropriation. To determine the amount of the historic coal funds, section 402(g)(5)(A) now requires us to allocate 60 percent of the amount of money left in the Fund after we allocate the 50 percent of reclamation fees to the State or Tribal shares under section 402(g)(1). This is an increase from the pre-2006 amendments amount of historic coal funds, which only allowed us to allocate 40 percent of the amount of money left in the Fund after the State or Tribal share funds were allocated. We distribute the historic coal funds for each FY to supplement grants awarded to uncertified States and Indian tribes that have not completed reclamation of their Priority 1 and 2 coal problems as defined by section 403(a).

We are proposing to word § 872.21(a) to more clearly describe the source and percentages of funds that will make up the historic coal funds. Only 50 percent of the reclamation fees collected annually is left in the Fund after the State or Tribal share funds are allocated. Under section 402(g)(5)(A), 60 percent of that remaining 50 percent (for a total of 30 percent), of reclamation fees is used to supplement grants. That section also provides for using 60 percent of all other revenue to the Fund for the same purpose. So, proposed § 872.21(a) states that, each year, 30 percent of AML fee collections for coal produced in the previous FY plus 60 percent of all other revenue to the Fund become historic coal funds.

Proposed § 872.21(b) describes other moneys included in historic coal funds as a result of the reallocations we must make during our annual fund distribution under sections 401(f)(3)(A)(i), 411(h)(1)(A)(ii), and 411(h)(4) of SMCRA. 30 U.S.C. 1231(f)(3)(A)(i), 1240a(h)(1)(A)(ii), and 1240a(h)(4). Paragraph (b)(1) specifies that moneys we reallocate to historic coal funds based on the prior balance replacement funds, which are distributed under § 872.29, will be available for grants beginning with Federal FY 2023. Paragraph (b)(2) states that moneys we reallocate to historic coal funds based on certified in lieu funds we distribute under § 872.32 will be available for grants in FY 2009 through FY 2022. 30 U.S.C. 1231(f)(3)(A)(i). As we explained in our discussions of §§ 872.15 and 872.18, after September 30, 2007, certified States and Indian tribes are no longer eligible to receive their State or Tribal share funds, which would have been 50 percent of the reclamation fees paid for coal mined on lands in their State or on Indian lands within their jurisdiction. 30 U.S.C. 1231(f)(3)(B). In addition,

section 402(g)(5)(A) prohibits certified States and Indian tribes from receiving historic coal funds. 30 U.S.C. 1232(g)(5)(A).

Although the certified States and Indian tribes no longer receive a portion of the reclamation fees paid for coal mined on their lands, we still collect reclamation fees from coal mining operators in certified States and on Indian lands as authorized by section 402(a) of SMCRA. Section 411(h)(4) of SMCRA, as revised by the 2006 amendments, directs us to reallocate to the historic coal funds money that would formerly have constituted a certified State's or Indian tribe's State or Tribal share, i.e., 50 percent of the amount of reclamation fees that coal mining operations in certified States and on Indian lands paid for coal produced in each FY. 30 U.S.C. 1240a(h)(4). Sections 411(h)(1)(A)(ii) and 411(h)(4) also require us to reallocate certified States' or Indian tribes' prior unappropriated balance of State or Tribal share funds to the historic coal funds. 30 U.S.C. 1240a(h)(4).

How does OSM distribute and award historic coal funds? (§ 872.22)

We propose to add § 872.22 to describe how we distribute and award historic coal funds. We distribute historic coal funds by determining which States and Indian tribes are eligible for historic coal funds. We also determine the total amount of funds available from fee collections for coal produced in the previous FY and from reallocations based on Treasury payments. Then we divide the available total between the eligible States and Indian tribes according to each State's or Indian tribe's percentage of the total tons of coal produced prior to August 3, 1977, from all eligible States and Indian tribal lands. We also propose to remove existing § 872.11(b)(4)(i) and (ii) and to include similar provisions at §§ 872.22(d) and (e) as explained below.

Section 872.22(a) includes three criteria you must meet to be eligible to receive historic coal funds. First, in paragraph (a)(1), you must have and maintain an approved reclamation plan under Part 884 to be eligible to receive historic coal funds. Second, you cannot be certified under section 411(a) of SMCRA. Third, because section 402(g)(5)(A) of SMCRA states that you can receive historic coal funds only if you have unfunded Priority 1 and 2 coal problems under section 403(a), to meet the criterion of paragraph (a)(2) you cannot have reclaimed all your Priority 1 and 2 coal problems. Thus, if you are an uncertified State or Indian tribe that has no remaining unfunded Priority 1 or 2 problems, you cannot receive historic coal funds.

Proposed § 872.22(b) says that once the eligibility criteria listed in § 872.22(a)(1) and (2) are met, we calculate the historic coal funds you receive using a formula based on the amount of coal historically produced before August 3, 1977, in your State or from the Indian lands concerned.

The table in proposed § 872.22(c) describes how we distribute historic coal funds. Section 401(f)(5)(B) of SMCRA requires that we phase in these distributions over four years beginning October 1, 2007. For the years beginning October 1, 2011, and continuing through September 30, 2022, we will distribute the full amount we calculated using the formula mentioned in paragraph (b). For the years beginning October 1, 2022, and continuing thereafter, we will distribute to you the amount needed to reclaim your remaining Priority 1 and 2 coal problems to the extent the funds are available.

Section 401(f)(2)(B) of SMCRA requires us to distribute the same overall amount from the Fund in FY 2023 and thereafter that we distribute in FY 2022, if the money is available. 30 U.S.C. 1231(f)(2)(B). Most of the moneys remaining in the Fund by that time will be historic coal funds. These moneys will be available for distribution in FY 2023 and later years because of the reallocation of prior balance replacement fund amounts to historic coal funds under sections 401(f)(3)(A)(i), 411(h)(1)(A)(ii) and 411(h)(4) of SMCRA. 30 U.S.C. 1231(f)(3)(A)(i), 1240a(h)(1)(A)(ii), and 411(h)(4). We will continue to use the formula described in paragraph (b) of this section to distribute historic coal funds to you in FY 2023 and afterward.

Proposed § 872.22(d) states that we will only distribute the historic coal funds you need to reclaim your unfunded Priority 1 or 2 coal problems. This paragraph includes the provisions that we propose to move from existing § 872.11(b)(4)(i) and (ii). It addresses the situation where the cost to reclaim all remaining Priority 1 and 2 coal problems in an uncertified State or Indian tribe is more than the amount that the State or Indian tribe receives for its State or Tribal share alone, but is less than the amount that the State or Indian tribe receives for its State or Tribal share, unused funds from prior allocations, and historic coal funds combined. In this situation, we will reduce the amount of historic coal funds the State or Indian tribe receives to the amount it needs to fund reclamation of its remaining Priority 1 or 2 coal problems.

Under proposed § 872.22(e), we will continue the long-standing practice of awarding historic coal funds to you in grants following the provisions of Part 886.

What may you use historic coal funds for? (§ 872.23)

Proposed § 872.23 describes how you may use historic coal funds. Consistent with sections 402(g)(5), 402(g)(6)(A), and 409(b) of SMCRA, this section allows you to use historic coal funds for the following purposes only: (1) Abandoned coal mine reclamation under § 874.12; (2) water supply restoration under § 874.14; (3) abating noncoal problems prior to certification under § 875.12 based on requests made under section 409(c) of SMCRA; (4) for deposit into an acid mine drainage abatement and treatment fund under Part 876; and (5) land acquisition under § 879.11.

The use of historic coal funds for some noncoal reclamation is clearly authorized in section 409(b) of SMCRA. That section, which was not modified by the 2006 amendments, states that ''[f]unds available for use in carrying out the purpose of this section [the reclamation of Priority 1 noncoal sites] shall be limited to those funds which must be allocated to the respective States or Indian tribes under the provisions of paragraphs (1) and (5) of section 402(g).'' 30 U.S.C. 1239(b). Because the historic coal funds are allocated to the States and Indian tribes under section 402(g)(5), uncertified States and Indian tribes are able to use historic coal funds provided under section 402(g)(5) to abate Priority 1 noncoal hazards based on requests made under section 409(c). We believe that amended section 402(g)(2), which requires ''strict compliance'' by uncertified States and Indian tribes with the reclamation of coal problems, does not impact the authorization in section 409(b) that allows historic coal funds to be expended on noncoal reclamation. Although we request comment on this issue, proposed § 872.23(a)(3) explicitly allows uncertified States and Indian tribes to continue using historic coal funds for noncoal reclamation consistent with section 409(b) of SMCRA.

In addition to the use of historic coal funds for coal reclamation, water supply restoration, and noncoal reclamation, paragraph (a)(4) specifies, consistent with section 402(g)(6) of SMCRA, as revised by the 2006 amendments, that you may use historic coal funds for deposit into an acid mine drainage

abatement and treatment fund under Part 876.

What are Federal expense funds? (§ 872.24)

We propose to divide existing § 872.11(b)(5) into two sections and to renumber those sections as §§ 872.24 and 872.25. These sections address what previously were known as ''Federal share funds'' under section 402(g)(3) of SMCRA. We call them ''Federal expense'' funds in this proposed rule. The new sections address the 2006 amendments and are worded in plain English.

Proposed § 872.24 replaces the introductory paragraph at existing § 872.11(b)(5) and identifies what Federal expense funds are. Federal expense funds are moneys in the Fund that are not allocated as State share, Tribal share, historic coal, or minimum program make up funds. Under section 401(d)(1) of SMCRA, we may use Federal expense funds only if Congress appropriates them.

What may OSM use Federal expense funds for? (§ 872.25)

Proposed § 872.25 describes how we may use Federal expense funds. Paragraphs (a) through (a)(5) list allowed uses in detail. For example, we may use these funds to perform nonemergency and other projects for States and Indian tribes that do not have approved reclamation programs and for the Secretary's administration of Title IV of SMCRA and subchapter R of the Federal regulations. Section 872.25 replaces existing §§ 872.11(b)(5)(i) through (v) as well as §§ 872.11(b)(7) and 872.11(b)(8) and is worded in plain English.

We propose to renumber existing § 872.11(b)(7) as § 872.25(b) and to reword it in plain English to describe the Federal expense distributions. This paragraph reflects the provision in the last sentence of section 402(g)(5)(A) of SMCRA, which states ''[f]unds made available under paragraph (3) or (4) of this subsection for any State or Indian tribe shall not be deducted against any allocation of funds to the State or Indian tribe under paragraph (1) or under this paragraph.'' 30 U.S.C. 1232(g)(5)(A). This paragraph clarifies that we are prohibited from deducting the amount of funds we allocate or distribute as Federal expenses, described at § 872.25, from your State or Tribal share funds and historic coal funds. Proposed § 872.25(b) also would remove a reference in existing § 872.11(b)(7) to minimum program make up funds provided under section 402(g)(8) of SMCRA because, under section 402(g)(3)(E) of SMCRA, as revised by the 2006 amendments, minimum program make up funds are expressly included in Federal expenses so the additional reference is no longer necessary. 30 U.S.C. 1232 (g)(3)(E).

In addition, we are proposing to renumber existing § 872.11(b)(8) as § 872.25(c) and reword it using plain English. This paragraph is consistent with section 402(g)(3)(C) of SMCRA. That section allows us to use Federal expense funds to address Priority 1, 2, and 3 coal problems that meet the eligibility requirements of section 404 in States and on Indian lands where the State or Indian tribe does not have an abandoned mine reclamation program approved under section 405. 30 U.S.C. 1232(g)(3)(C).

What are minimum program make up funds? (§ 872.26)

Our proposed changes to existing § 872.11(b)(6) include removing it and replacing it with §§ 872.26 and 872.27 and wording them in plain English. These sections are consistent with the provisions of section 402(g)(8) of SMCRA, as revised by the 2006 amendments, for what commonly has been called ''minimum program funding'' or the ''minimum program make-up.''

Section 872.26 addresses what we call ''minimum program make up funds'' in this rule. Paragraph (a) describes these funds as additional moneys that we distribute to eligible States and Indian tribes each year to make up the difference between their total distribution of other funds and $3 million. It also identifies the source of these moneys as the non-appropriated Federal expense funds. Section 402(g)(3)(E) of SMCRA requires us to use Federal expense funds provided under section 402(g)(3) for this mandatory distribution. 30 U.S.C. 1232(g)(3)(E). However, unlike other Federal expense funds provided under section 402(g)(3) and § 872.24 of the regulations, these funds are not subject to prior Congressional appropriation. 30 U.S.C. 1231(d)(1).

Proposed §§ 872.26(b) through (b)(4) describe four criteria you must meet to be eligible to receive minimum program make up funds. First, you must have and maintain an approved reclamation plan under Part 884. Next, you cannot be certified under section 411(a) of SMCRA. Third, the total amount of State or Tribal share, historic coal, and prior balance replacement funds you receive annually must be less than $3 million. Last, you must have unfunded Priority 1 and 2 coal problems greater than your total annual amount of State or Tribal share, historic coal, and prior balance replacement funds.

Consistent with section 402(g)(8)(B) of SMCRA, proposed § 872.26(c) makes the same amount of funding available to the States of Missouri and Tennessee to reclaim Priority 1 and 2 coal problems provided they have abandoned mine reclamation plans under Part 884.

How does OSM distribute and award minimum program make up funds? (§ 872.27)

Proposed § 872.27 describes how we distribute and award minimum program make up funds. Paragraph (a) provides that we distribute these funds to you if you meet the eligibility requirements of § 872.26(b). In paragraph (a)(1), we describe how we calculate the amount of the Federal expense funds, if any, we use to supplement the other funds you receive under Title IV of SMCRA. We add up the annual distributions you receive for your prior balance replacement funding under § 872.29, your State or Tribal share moneys under §§ 872.14 or 872.17, and your historic coal funds under § 872.21. If your distribution of these funds is equal to or greater than $3 million annually, you will not receive any minimum program funding under this section. If your distribution of these funds is less than $3 million annually, we add Federal expense funds to increase your total distribution to $3 million.

Although we use Federal expense funds to ensure that all uncertified States and Indian tribes receive at least $3 million in their distributions, we are required to reduce the amount of these minimum program make up distributions for the first four years to comply with the phase-in provision of section 401(f)(5)(B) of SMCRA, as revised by the 2006 amendments. 30 U.S.C. 1231(f)(5)(B). The table in paragraph (a)(2) describes how we phase-in funding beginning October 1, 2007, until you reach the full funding level beginning October 1, 2011.

Proposed § 872.27 is consistent with provisions of sections 401(f)(5) and 402(g)(8) of SMCRA, as revised in the 2006 amendments. Section 402(g)(8)(A) requires us to ensure that ''[i]n making funds available under this title'' your ''grant awards total not less than $3 million annually.'' 30 U.S.C. 1232(g)(8)(A). We interpret this provision to mean the full funding level for grants we must annually award to eligible States and Indian tribes under this section is $3 million. So, we must include the total of funds an uncertified State or Indian tribe receives under all of Title IV—including the State or Tribal share funds (section 402(g)(1)), the

historic coal funds (section 402(g)(5)), and the prior balance replacement funds (section 411(h)(1))—as part of the $3 million referred to in section 402(g)(8)(A).

All section 402(g)(8) funds are distributed under section 401(d)(3) and (f) of SMCRA. Despite the amounts listed in section 401(f)(3) for distribution to the uncertified State and Indian tribes, this section requires us to phase in all ''amount[s] distributed under this subsection'' for the first four fiscal years beginning with FY 2008. 30 U.S.C. 1231(f)(5)(B). Section 401(f)(3) clearly covers the money allocated by section 402(g)(8) to ensure the $3 million distribution to eligible States and Indian Tribes. 30 U.S.C. 1231(f)(3)(A).

We are phasing-in this funding based on sections 401(f)(2)(A)(ii), 401(f)(3)(A)(ii), and 401(f)(5) of SMCRA. There are other ways to calculate the phased-in distribution. We are proposing the method that we chose for the 2008 distribution because we believe it maximizes funding for the minimum program States. To calculate the distribution, we first add up your annual prior balance replacement, State or Tribal share, and historic coal fund distributions. Then we calculate how much additional minimum program make up funding you would need to reach $3 million. We apply the phase-in only to that additional minimum program make up funding.

The following example illustrates the phase-in method: The distribution of State A's prior balance replacement funds and its phased-in State share funds and historic coal funds totals $400,000. The amount of minimum program funds we would add to bring State A's total distribution to $3 million is $2.6 million. In FY 2008 and FY 2009, we would add 50 percent of the $2.6 million in minimum program make up funds, or $1.3 million, to the $400,000 sum of the State's other funding. State A's total distributions for FY 2008 and FY 2009 therefore would be $1.7 million each. In FY 2010 and FY 2011, we would add 75 percent of the $2.6 million amount of minimum program funds, or $1,950,000, to the $400,000 sum of State A's other funding (assuming, for this example, that those other funding levels remain constant). State A would therefore receive $2,350,000 in both FY 2010 and FY 2011.

We invite you to comment on other ways to calculate minimum program make up funding that meet SMCRA's requirements.

The table in § 872.27(a)(2)(iii) shows that beginning in FY 2012, your total annual distribution will not be less than $3 million unless the estimated reclamation cost of your remaining Priority 1 and 2 coal problems is less than $3 million. Section 872.27(a)(2)(iv) explains that if you have Priority 1 and 2 coal problems remaining after September 30, 2022, we will continue to fund your total annual distribution at no less than $3 million (to the extent funds still are available) until the estimated cost of reclaiming your Priority 1 and 2 coal problems is less than $3 million. If the estimated cost of reclaiming your Priority 1 and 2 coal problems is less than $3 million but more than your total annual distribution of all other types of Title IV funds, we will provide minimum program make up funding up to the amount of your total unfunded reclamation cost.

Last, proposed § 872.27(b) states that we will award minimum program make up funds to you in grants following the procedures of Part 886 for uncertified States and Indian tribes, as we have for many years.

What may you use minimum program make up funds for? (§ 872.28)

Consistent with section 402(g)(8)(A) of SMCRA, we propose to add § 872.28 to state that you may only use minimum program make up funds to reclaim Priority 1 and 2 coal problems. You may not use minimum program make up funds for Priority 3 coal problems, AMD set-asides, noncoal problems, or any other work except Priority 1 and 2 coal problems.

What are prior balance replacement funds? (§ 872.29)

Section 872.29 is one of three new sections we propose to add to explain the provisions of section 411(h)(1) of SMCRA, as revised by the 2006 amendments, for what we call ''prior balance replacement funds'' in this rule. This section describes them as moneys we must distribute to you instead of the moneys that we allocated to your State or Tribal share of the Fund before October 1, 2007, but that we did not actually distribute to you because Congress never appropriated them. It identifies the source of these funds as general funds of the U.S. Treasury that are otherwise unappropriated, not the Fund. Under the 2006 amendments, distributions of prior balance replacement funds from general funds of the U.S. Treasury are mandatory and are not subject to Congressional appropriation. These distributions start in FY 2008 and last for seven years.

We do not propose to add a provision to this section, or to proposed § 872.32 which addresses certified in lieu funds from Treasury, to reflect the funding cap set forth in section 402(i)(3)(A) of SMCRA. 30 U.S.C. 1232(i)(3)(A). That cap limits to $490 million in any fiscal year the total amount of Treasury funding for grants to States and Indian tribes and for transfers to the three UMWA health care plans described in sections 402(h) and (i) of SMCRA. In addition, section 402(i)(3)(B) provides that if the cap is exceeded, each transfer would be reduced proportionally. 30 U.S.C. 1232(i)(3)(B). At this time, we project that total needs for this funding will remain below the cap amount; therefore, we have not proposed specific rule language describing how we would reduce our distribution of prior balance replacement funds and certified in lieu funds if the cap were reached. We request your comments on whether we should add such a provision, and, if so, what should it contain.

How does OSM distribute and award prior balance replacement funds? (§ 872.30)

We added § 872.30 to describe how we propose to distribute and award prior balance replacement funds. Under paragraph (a)(1), we propose to distribute U.S. Treasury funds to you, all States and Indian tribes with approved reclamation plans, equal to the moneys that we allocated to your State or Tribal share before October 1, 2007, but that were not distributed before then. Under paragraph (a)(2), we propose to distribute these funds to you if you are, or are not, certified under section 411(a) of SMCRA. Consistent with section 411(h)(1)(C) of SMCRA, proposed paragraph (a)(3) requires us to distribute these funds to you in seven equal annual installments, beginning in FY 2008.

Under proposed § 872.30(b), we will award prior balance replacement funds to you in grants under Part 885 if you are a certified State or Indian tribe or under Part 886 if you are uncertified. Section 411(h)(1) of SMCRA says '' * * * the Secretary shall make payments to States or Indian tribes for the amount due * * * .'' 30 U.S.C. 1240a(h)(1)(A)(i).

We recognize that SMCRA, as amended, unambiguously requires us to distribute moneys from the general Treasury to the States and Indian tribes, but the 2006 amendments do not specify a *method* of payment for us to use to make the ''payments.'' *See, e.g.,* 30 U.S.C. 1232(i)(2) (''[O]ut of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of the Interior for distribution to States and Indian tribes such sums as are

necessary to pay amounts described in paragraphs (1)(A) and (2)(A) of section 411(h).''). We considered many methods for making the payments to States and Indian Tribes under section 411(h)(1). Based on that consideration and the Solicitor's M-opinion, we are required to make these payments as grants.

Not only are we required to use grants to distribute prior balance replacement funds under section 411(h)(1), but doing so also has advantages. First, using grants allows us to continue the established and effective process we have been using to disburse moneys from the Fund to States and Indian tribes for almost 30 years. Grants policies and procedures currently are described in our Federal Assistance Manual (FAM; OSM Directive GMT–10). They are simplified compared to those procedures used for the grants we award under Title V of SMCRA. The FAM and all grant application forms are available on-line, and States and Indian tribes can develop and submit grant applications to us electronically. Likewise, much of our application processing and all of our grant approval and award actions occur electronically. These capabilities are integrated with the Department of the Interior's Financial and Business Management System (FBMS). States' and Indian tribes' finance and accounting departments are experienced in following these procedures for receiving and managing grant funds we award. In addition, they are well versed in OMB Circular A–102, the ''Grants Common Rule'' at 43 CFR Part 12, and FAM requirements that we follow for providing financial assistance under Title IV of SMCRA. Those requirements include periodic reporting and auditing that help States, Indian tribes, and us ensure proper accounting for funds and their use.

Second, using grants can help us address our programmatic responsibilities concerning certified and uncertified States and Indian tribes under sections 201(c)(1) and (4) of SMCRA. 30 U.S.C. 1211(c)(1) and (4). Grant requirements for periodic reporting provide some of the information we need to monitor and evaluate States' and Indian tribes' accomplishments, determine if they are following their approved grants and reclamation plans, identify the need for assistance, and to help us with our reporting requirement mandated by section 405(j) of SMCRA.

Third, using grants allows us to maintain financial accountability for the prior balance replacement funds. As discussed in proposed § 872.31, the 2006 amendments require that prior balance replacement funds be used for specific purposes: Certified States and Indian tribes must use them for ''the purposes established by the State legislature or tribal council of the Indian tribe, with priority given for addressing the impacts of mineral development''; and uncertified States and Indian tribes must use them for coal reclamation as described in section 403. 30 U.S.C. 1240a(h)(1)(D). Using grants provides us with oversight to ensure that the States and Indian tribes are spending prior balance replacement funds as required by SMCRA, as revised by the 2006 amendments, and specifically that uncertified States and Indian tribes are directing prior balance replacement funds into coal reclamation.

Last, the Treasury regulations associated with grants (31 CFR Part 205) allow States and Indian tribes to draw down prior balance replacement funds to pay expenses while otherwise keeping funds in the U.S. Treasury until needed.

Proposed § 872.30(c) addresses sections 411(h)(1)(A)(ii) and 411(h)(4)(A) of SMCRA, as revised by the 2006 amendments. 30 U.S.C. 1240a(h)(1)(A)(ii) and 1240a(h)(4)(A). It requires us to transfer to historic coal funds the moneys in your State or Tribal share of the Fund that were allocated, but not appropriated to you, before October 1, 2007. The amount of this transfer will be of the same amount that we pay you as prior balance replacement funds under this section and 411(h)(1) of SMCRA. Proposed § 872.30(c) further requires us to make the amounts transferred to the historic coal funds available for annual grants beginning in FY 2023, which is the same time we distribute the remaining moneys under Title IV. Finally, it requires us to allocate, distribute, and award the transferred amounts to you according to the provisions applicable to historic coal funds under §§ 872.21, 872.22, and 872.23.

What may you use prior balance replacement funds for? (§ 872.31)

Consistent with section 411(h)(1)(D)(i) of SMCRA, proposed § 872.31(a) requires you, a certified State or Indian tribe, to use the prior balance replacement funds you receive only for the purposes that your State legislature or Tribal council establishes, giving priority to addressing the impacts of mineral development. 30 U.S.C. 1240a(h)(1)(D)(i). While this language is taken essentially verbatim from the 2006 amendments, we realize this provision may significantly affect certified States' and Indian tribes' reclamation programs, and we specifically invite your comments on this proposal.

Under SMCRA, as revised by the 2006 amendments, the State legislature or Tribal council has broad and sole discretion to determine how prior balance replacement funds will be spent. Because OSM has no basis for approving or disapproving individual projects to be undertaken with these funds, we do not believe that projects paid for with prior balance replacement funds would be subject to OSM review requirements under laws such as the National Environmental Policy Act of 1969 (NEPA) and the National Historic Preservation Act (NHPA). Certified States or Indian tribes would be solely responsible for determining what other Federal laws are applicable to their activities. Therefore, we are not proposing that an Authorization to Proceed (ATP) from OSM with an accompanying NEPA review would be required. We invite your comments on this issue.

Proposed §§ 872.31(b) through (b)(3) require that uncertified States and Indian tribes use their prior balance replacement funds only for activities related to abandoned coal mine problems. Section 411(h)(1)(D)(ii) specifies that uncertified States ''shall use any amounts provided under this paragraph for the purposes described in section 403.'' 30 U.S.C. 1240a(h)(1)(D)(ii). So, uncertified States and Tribes must use prior balance replacement funds to reclaim Priority 1, 2, and 3 coal problems under § 874.12, to restore water supplies under § 874.14, and to maintain the AML inventory under section 403(c) of SMCRA. Though not a required use in proposed § 872.31(b), we believe uncertified States and Indian tribes may use these funds to acquire lands under § 879.11 as needed to address coal problems under section 403.

Congress enacted the 2006 amendments out of a concern for addressing remaining coal problems. Section 409(b) specifies that only certain types of funds can be used to address noncoal problems. 30 U.S.C. 1239(b). Prior balance replacement funds, authorized to be paid under section 411(h)(1), are not among the types of funds specified for noncoal reclamation under section 409(b).

Prior balance replacement funds described in section 411(h)(1) are based on the amount of the reclamation fees we collected in each State and on Indian lands and allocated to those States and Indian tribes under section 402(g)(1), but that Congress did not appropriate through FY 2007. However, the 2006 amendments reallocate those unappropriated section 402(g)(1) moneys to the historic coal funds of

section 402(g)(5). 30 U.S.C. 1240a(h)(1)(A)(ii) and 1240a(h)(4)(A). The prior balance replacement funds that the uncertified States and Indian tribes receive may be of an amount equivalent to the unappropriated balance, but they are paid from U.S. Treasury funds and have not been allocated under section 402(g)(1). There is a fundamental distinction between the prior balance replacement funds and section 402(g) moneys distributed from the Fund.

Therefore, proposed § 872.31(b) requires you, the uncertified State or Indian tribe, to use prior balance replacement funds only for the three purposes described above. This interpretation will not prevent you from abating Priority 1 noncoal hazards to public health and safety with the State or Tribal share funds we distribute to you annually under §§ 872.14 or 872.17 and historic coal funds we distribute under § 872.21.

What are certified in lieu funds? (§ 872.32)

We propose three new sections addressing funds distributed to States and Indian tribes described in section 411(h)(2) of SMCRA. 30 U.S.C. 1240a(h)(2). We call these moneys ''certified in lieu funds'' in this proposed rule. As the first of these three sections, § 872.32 describes certified in lieu funds as moneys that we will distribute to you, a certified State or Indian tribe, in lieu of moneys otherwise allocated to your State or Tribal share of the Fund after October 1, 2007. We are prohibited from distributing State and Tribal share moneys to you because of the exclusion in section 401(f)(3)(B) of SMCRA. 30 U.S.C. 1231(f)(3)(B). This proposed section also identifies the source of these certified in lieu funds as otherwise unappropriated funds in the United States Treasury, not the Fund. The annual distribution of certified in lieu funds is mandatory and not subject to prior Congressional appropriation. These distributions will start in FY 2009 because section 411(h)(2) of SMCRA specifies that our payments must equal the State and Tribal share funds ''allocated on or after October 1, 2007.'' 30 U.S.C. 1240a(h)(2)(A). So, the first fees collected that can serve as the basis for calculating certified in lieu payments are those allocated on coal produced during FY 2008. As a result, we will distribute certified in lieu funds for the first time in FY 2009.

How does OSM distribute and award certified in lieu funds? (§ 872.33)

Proposed § 872.33 describes how we will distribute and award certified in lieu funds. Paragraph (a) states that you must be certified under section 411(a) of SMCRA to receive certified in lieu funds, as required in section 411(h)(2) and defined in section 411(h)(2)(B). If you meet that requirement, we will follow the steps described in paragraph (b) to distribute these moneys to you. Under paragraph (b)(1), we will annually distribute to you, beginning in FY 2009, an amount based on 50 percent of the reclamation fees we received for coal produced during the previous FY in your State or on Indian lands within the jurisdiction of your Indian tribe. Proposed paragraph (b)(2) states that the funds we annually distribute to you will be in lieu of moneys you would have received from your State or Tribal share of the Fund if section 401(f)(3)(B) of SMCRA, as revised by the 2006 amendments, did not specifically exclude you from receiving those funds. 30 U.S.C. 1231(f)(3)(B). Although the Fund will not be the source of these moneys that we distribute to you, you will receive moneys each year as though you were still receiving them from your State or Tribal share of the Fund.

Proposed § 872.33(b)(3) explains, using a table, how we intend to phase-in our distribution of certified in lieu funds to you over the first three years beginning October 1, 2008. This paragraph is consistent with section 411(h)(3)(B) of SMCRA, which requires that in the first three fiscal years beginning with FY 2009, the amount we annually distribute to you will be equal to 25 percent, 50 percent, and 75 percent, respectively, of 50 percent of the annual reclamation fee collections in your State or from Indian lands within your jurisdiction. 30 U.S.C. 1240a(h)(3)(B). You will receive an amount equal to 100 percent of your 50 percent State or Tribal share of annual reclamation fee collections in the fiscal year beginning October 1, 2011, and in the following fiscal years.

Proposed § 872.33(c) states our intention to use grants to pay these funds to you. Section 411(h)(2) of SMCRA says ''the Secretary shall pay to each certified State or Indian tribe * * *.'' 30 U.S.C. 1240a(h)(2)(A). As with the section 411(h)(1) prior balance replacement fund ''payments,'' we must use grants to pay certified in lieu funds to you. *See* the discussion of § 872.30 above.

The proposed paragraph § 872.33(d) addresses the provisions of sections 401(f)(3)(A)(i) and 411(h)(4) of SMCRA. It requires us to transfer to historic coal funds the same amount of funds that we distribute to you as certified in lieu funds. The transferred amounts will come from moneys in your State or Tribal share of the Fund that are otherwise allocated to you for the prior fiscal year, but which you are barred from receiving. We must make those transferred amounts available for annual grants beginning in FY 2009, and will do so at the same time we distribute all other moneys under Title IV. Finally, proposed § 872.33(d) requires us to allocate, distribute, and award the transferred amounts to uncertified States and Indian tribes according to the provisions applicable to historic coal funds under §§ 872.21, 872.22, and 872.23.

Section 411(h)(3)(C) of SMCRA requires us to distribute to you, in two equal annual installments in FY 2018 and FY 2019, the amounts we withhold from the first three payments of certified in lieu funds as a result of the phased-in distribution. 30 U.S.C. 1240a(h)(3)(C). Proposed § 872.33(e) incorporates that provision into the regulations.

What may you use certified in lieu funds for? (§ 872.34)

Proposed § 872.34 states that you may use certified in lieu funds for any purpose. We believe that by not specifying any prescribed uses for these moneys, the 2006 amendments allow you to use certified in lieu funds for any purpose. Congress could have easily imposed a requirement to use the funds for a specific purpose as it did for prior balance replacement funds in sections 411(h)(1)(A)(i) and (ii). Because section 411(h)(2) does not specify the purpose(s) for which the funding it provides may be used, we interpret it to mean that the use of the funds it provides is not restricted.

However, we also recognize there is an alternative reading of SMCRA, as amended, and invite comment on whether our proposal reflects the better reading. Section 411(h)(2) of SMCRA, as revised by the 2006 amendments, is silent on how certified in lieu funds can be used. An argument can be made that this section's silence on the use of these funds does not mean certified States and Indian tribes can use them for any purpose. Instead, it might be viewed as meaning that the other provisions of section 411 of SMCRA, specifically 411(b) through (g), apply to the use of certified in lieu funds. Because this would make a major difference in not only how these funds may be used, but in OSM's role in overseeing that use, we invite comment on which alternative is

the better reading of the 2006 amendments.

In any case, as a certified State or Indian tribe, you must address coal problems that arise after certification under existing § 875.14(b), and we do not propose to change this requirement. In addition, when each State and Indian tribe became certified under the existing regulations at § 875.13(a)(3), they had to provide an agreement to ''give top priority'' to any coal problems that occur after certification. So, certified States and Indian tribes must address these coal problems, regardless of the funding source.

*Part 873—Future Reclamation Set-Aside Program*

Applicability (§ 873.11)

The 2006 amendments eliminated the authority for States and Indian tribes to set-aside funds for future reclamation that was once contained in section 402(g)(6). The proposed changes to §§ 873.11 and 873.12 reflect that change by restricting future set-aside actions to funding received prior to December 20, 2006, while preserving the requirements that existing funds contained in the set-aside account be used for their intended purpose. We reworded this section to account for this change and to use plain English.

Future Set-Aside Program Criteria (§ 873.12)

We propose to revise paragraph (a) to include December 20, 2006, as the cutoff date for deposits to future set-aside fund accounts. As explained above, we are making this change because the 2006 amendments removed the authority for States and Indian tribes to use Fund moneys for this purpose. We are also removing the phrase, ''or (2) An acid mine drainage abatement and treatment fund pursuant to 30 CFR part 876,'' as the acid mine drainage set-aside program is addressed in that Part of this rule. Likewise, we are deleting paragraph (b) because it repeats the conditions for funds that were previously set aside which are already included in paragraph (a). We are deleting the first sentence of existing paragraph (c) because it is now obsolete. We also reworded this section in plain English.

*Part 874—General Reclamation Requirements*

Definitions (§ 874.5)

We propose to add this new section to Part 874 to include the definition of the term ''Reclamation plan or State reclamation plan'' as it is defined in proposed § 872.5.

Information Collection (§ 874.10)

We propose to reword this paragraph using plain English and to use the current format approved by the OMB. It describes OMB's approval of information collections in Part 874, our use of that information, and the estimated reporting burden associated with those collections.

Applicability (§ 874.11)

We are proposing revisions to this section to clarify how the provisions of Part 874 apply to the types of funding made available under the 2006 amendments and to reword it using plain English. The new paragraph (a) continues to impose the existing requirement for compliance when reclaiming eligible lands and waters with moneys from the Fund. The new paragraph (b) would impose compliance when conducting reclamation projects with the prior balance replacement funds received by uncertified programs from section 411(h)(1) of SMCRA because section 411(h)(1)(D)(ii) states that the funds received must be used for the purposes of section 403. 30 U.S.C. 1240a(h)(1)(D)(ii). Section 403 imposes coal reclamation priorities, authorizes water supply restoration, and requires the maintenance of the AML inventory. 30 U.S.C. 1233. The new paragraph (c) would impose compliance by certified programs when using certified in lieu funds provided under section 411(h)(2) of SMCRA to address eligible coal problems after certification. We are proposing this requirement to ensure that coal problems are uniformly addressed under each program, regardless of certification status under section 411.

The new paragraph (d) requires certified programs to follow the requirements of this Part when expending the prior balance replacement funds provided by section 411(h)(1) of SMCRA to address coal problems after certification. Certified States and Indian tribes are to expend their prior balance replacement funds for the purposes established by the State legislature or Tribal council with priority given to addressing the impacts of mineral development. 30 U.S.C. 1240a(h)(1)(D)(i). However, when certified States and Indian tribes use prior balance replacement funds to address coal problems subsequent to certification, compliance with the provisions under Part 874 will be central to our review and approval process.

Eligible Coal Lands and Water (§ 874.12)

We are proposing to revise existing paragraphs (c), (e), and (f) of § 874.12 to reflect our proposed changes to the funding applicability in § 874.11, to correct minor errors in the existing regulations, and to reword these paragraphs using plain English. First, § 874.12(c) would be updated to allow the use of prior balance replacement funds by uncertified programs to supplement the cost of reclamation at eligible bond forfeiture sites consistent with section 411(h)(1)(D)(ii), which allows funds to be spent for the purposes described in section 403. Next, we propose inserting language in § 874.12(e) to allow uncertified programs to use prior balance replacement funds for the reclamation and abatement of inadequately reclaimed Priority 1 or Priority 2 sites that were mined between August 4, 1977, and the date on which the Secretary approved a State regulatory program, known as ''interim program sites,'' or where the surety of the mining operator became insolvent as of November 5, 1990, known as ''insolvent surety sites.'' We also corrected an error in the first sentence by replacing the second ''may'' with ''made'' so that the sentence reads: ''An uncertified State or Indian tribe may expend funds made available * * *.'' Last, the revisions to § 874.12(f) are minor conforming changes and do not alter the existing scope or meaning of that paragraph.

Reclamation Objectives and Priorities (§ 874.13)

We are proposing changes to § 874.13 that reflect expenditure priorities outlined in section 403(a) of SMCRA, as revised by the 2006 amendments, and clarify how reclamation programs should address Priority 3 reclamation objectives. Proposed paragraph (a) of § 874.13 contains the most recent date for our ''Final Guidelines for Reclamation Programs and Projects'' published in 2001. 66 FR 31250, 31258. In addition, it contains the long-standing requirement in section 403(a) of SMCRA that expenditures must ''reflect the * * * priorities in the order stated.'' 30 U.S.C. 1233(a).

The remainder of the proposed § 874.13(a) is generally the same as the text of sections 403(a)(1), (a)(2), and (a)(3) of SMCRA, as revised by the 2006 amendments. However, the last sentence of § 874.13(a)(3) was added to clarify the term ''adjacent,'' which was added by the 2006 amendments. More specifically, sections 403(a)(1)(B)(ii) and (a)(2)(B)(ii) of SMCRA allow for certain lands and waters that have been

degraded by past coal mining practices to be restored as either a Priority 1 or Priority 2 expenditure if they are adjacent to a Priority 1 or Priority 2 site. This new statutory provision also extends to Priority 3 lands and waters adjacent to Priority 1 or 2 sites that have already been reclaimed under the approved reclamation plan. In effect, the 2006 amendments allow reclamation programs to offer amendments to the AML inventory, where applicable, that would reclassify certain current Priority 3 lands and waters as Priority 1 or Priority 2 expenditures.

We propose that the term ''adjacent'' means Priority 3 eligible lands and waters that are ''geographically contiguous.'' Under our proposal, land and water resources that are spatially connected to a Priority 1 or Priority 2 site, even those sites previously reclaimed, may now be recorded in the AML inventory as Priority 1 or Priority 2 unfunded costs, funded costs, or completed expenditures, as applicable.

Given that our proposed § 874.13(a) contains only geographical considerations, we are also seeking comment on possible alternative definitions of or restrictions to the term ''adjacent.'' For example, we would like to receive comments on whether the term ''adjacent'' should include all disturbances by a single mining operation or company. Should the term ''adjacent'' allow for a hydrologic connection even though there may be great distances between the sites? Should the term contain restrictions on the types of Priority 3 problems or costs that can qualify? States can now set up 30% AMD set-aside trusts under 402(g)(6) of SMCRA. In view of that option, should there be any restrictions on how the term ''adjacent'' is used for Priority 3 AMD problems? Should permanent facility construction and perpetual treatment costs associated with AMD from a Priority 2 mine opening or highwall be elevated to Priority 2 status? Some facilities and perpetual treatment costs can run into hundreds of thousands, if not millions, of dollars. Should the expenditures for large acreages of Priority 3 subsidence be elevated in priority because they are geographically contiguous to a small Priority 2 subsidence event, regardless of cost? What about small Priority 2 tipples connected to large Priority 3 refuse piles? Finally, because the 2006 amendments removed the 30% cap in water supply replacement expenditures under section 403(b), should adversely affected water supplies be elevated in priority when adjacent to other kinds of Priority 1 or 2 reclamation sites? We would like to receive comments on whether there should be any limitations, monetary or otherwise, on the kinds of AML programs that should be addressed under the term ''adjacent.''

The proposed paragraph (b) of § 874.13 incorporates the 2006 amendments' complete revision of section 402(g)(7) of SMCRA. Previously, section 402(g)(7) contained the requirements for developing hydrologic unit plans consistent with the AMD set-aside trust provision of section 402(g)(6). The amended language of section 402(g)(7) now addresses how Priority 3 work can be undertaken; it states:

> In complying with the priorities described in section 403(a), any State or Indian tribe may use amounts available in grants made annually to the State or tribe under paragraphs (1) and (5) for the reclamation of eligible land and water described in section 403(a)(3) before the completion of reclamation projects under paragraphs (1) and (2) of section 403(a) only if the expenditure of funds for the reclamation is done in conjunction with the expenditure before, on, or after the date of enactment of the Surface Mining Control and Reclamation Act Amendments of 2006 of funds for reclamation projects under paragraphs (1) and (2) of section 403(a).

30 U.S.C. 1232(g)(7)

In effect, section 402(g)(7) prevents uncertified States or Indian tribes from using State or Tribal share funds, as discussed in section 402(g)(1) of SMCRA, and §§ 872.14 and 872.17, and historic coal funds, as discussed in section 402(g)(5) of SMCRA and § 872.21, for the reclamation of Priority 3 lands and water before they have completed their Priority 1 and 2 reclamation projects. However, section 402(g)(7) does provide an exception that allows State or Tribal share funds and historic coal funds to be used for Priority 3 lands and waters, but only if that reclamation is done in conjunction with the expenditure of funds before, on, or after December 20, 2006, for Priority 1 and Priority 2 reclamation.

To be consistent with this section, we propose to apply section 402(g)(7) of SMCRA in a manner that is slightly more restrictive than the way we have promoted Priority 3 land and water reclamation in the past. Our longstanding approach, based on the first sentence of section 403(a), has been that reclamation programs can reclaim Priority 3 land and water projects before the completion of all Priority 1 and 2 projects as long as the overall reclamation program generally reflects the priorities in section 403(a) of SMCRA. The Department of the Interior initially expressed this approach in a May 18, 1982, memorandum by the Office of the Solicitor that recognized the discretion program officials have in selecting projects based upon a wide range of qualitative and quantitative data. This memorandum also concluded that the States and the Secretary have ample authority and rationale to select projects based upon such factors as are outlined in § 874.13 and to fund lower priority projects together with higher priority projects as long as the total program reflects the achievement of objectives in section 403(a) of SMCRA.

Through the life of the AML program, we published and maintained an advisory document titled ''Final Guidelines for Reclamation Programs and Projects'' (see latest version 66 FR 31250, June 11, 2001). These guidelines direct that, generally, reclamation of lower priority projects should not begin until all known higher priority projects have been completed, are in the process of being reclaimed, or have been approved for funding by the Secretary. *See* 66 FR 31252, (''Reclamation Site Ranking''). Our guidance further explains that lower priority projects or contiguous work may be undertaken in conjunction with high priority projects, but it sets forth factors to weigh to determine if the lower priority projects should be considered over higher priority projects. Examples of these factors include: When a landowner consents to participate in post reclamation maintenance activities of the area; when the reclamation provides many benefits to the landowner and those benefits have a greater cumulative value than other projects; and when reclamation provides offsite public benefits. *Id.* We also promote the reclamation of lower priority lands and waters when it is cost effective. *See* 66 FR 31253 (''Reclamation Extent''). To date, we have encouraged stand-alone Priority 3 projects and Priority 3 work that is contiguous with higher priority work based upon the efficiencies gained for the program and the environmental and community benefits.

To be consistent with the revised language of section 402(g)(7) of SMCRA, we are proposing to replace the existing language under § 874.13(b) with language that specifies that this provision applies to uncertified States and Indian tribes who seek to use State or Tribal share funds and historic coal funds for Priority 3 reclamation. However, based on section 402(g)(7) and our past experience, this proposed provision also requires uncertified States and Indian tribes to meet one of two conditions before being allowed to reclaim Priority 3 sites.

Under the first condition, described in proposed § 874.13(b)(1), uncertified

States and Indian tribes may only complete stand alone Priority 3 projects after the State or Indian tribe has completed all Priority 1 and 2 reclamation projects in its jurisdiction. We believe this proposal to be slightly more restrictive than the existing regulations because, if finalized, it would prohibit stand-alone Priority 3 projects until all known Priority 1 or 2 sites have been completed, unless the uncertified State or Indian tribe meets the conditions detailed in proposed § 874.13(b)(2).

Proposed § 874.13(b)(2) allows uncertified States and Indian tribes to reclaim Priority 3 lands and waters before all higher priority sites are reclaimed, as long as they are being done ''in conjunction with'' a Priority 1 or Priority 2 project. Specifically, proposed § 874.13(b)(2) allows you to expend State or Tribal share and historic coal funds for the reclamation of Priority 3 lands and water that are related to past, present, or future projects, but only if you determine that such expenditures would or would have (i) facilitate(d) the Priority 1 or Priority 2 reclamation or, (ii) provide(d) reasonable savings at the time of the project towards the objective of reclaiming all Priority 3 land and water problems. We are proposing these two conditions because they will promote Priority 3 reclamation while emphasizing the elevated Priority 1 and 2 reclamation objectives contained in the 2006 amendments. Under our proposed revision, program officials could not only use State and Tribal share and historic coal funds for Priority 3 sites that would aid in the reclamation of higher priority sites or would be cost efficient to do so, but they could also revisit each completed project and determine if there are Priority 3 lands and waters related to those past projects that still need to be reclaimed. These Priority 3 sites could then be reclaimed before the all Priority 1 and 2 problems have been addressed.

While we anticipate that most Priority 3 lands that fall within § 874.13(b)(2)(i) would have been addressed during the initial project, there may be areas where, at the time, the efficiencies of combined contracting or other cost saving factors would have satisfied § 874.13(b)(2)(ii). Reasons why such lands may not have been incorporated in the initial project could include past landowner restrictions, shortage of available grant funding, staffing and administrative considerations, or the potential for remining.

We believe that the language of § 874.13(b)(2), as proposed, does not specifically preclude allowing Priority 3 work as a separate phase of construction within a Priority 1 or 2 project. However, Priority 3 work that is undertaken as a separate phase may not realize the administrative and contracting efficiencies of combined design and development, one-time mobilization and demobilization costs, or reduced unit costs that can be attributed to larger projects. These types of factors would be central to an analysis to determine whether there are reasonable savings under proposed § 874.13(b)(2)(ii). We welcome comments on the effect of our proposed language on construction project phasing.

As described above, the 2006 amendments substantially elevated and redirected resources towards the uncertified programs with the most hazardous—Priority 1 and 2—coal sites. This was accomplished through the mandatory distributions of State or Tribal share funds and historic coal funds, the reallocation of the section 402(g)(1) funding away from certified programs, and raising the minimum program make up funding level. 30 U.S.C. 1231(f)(3)(B), 1232(g)(1)(A), 1232(g)(1)(B), 1232(g)(5), 1232(g)(8)(A), and 1240a(h)(4). In addition, the 2006 amendments strengthened our responsibilities towards oversight of reclamation by obliging us to ensure that uncertified States and Indian tribes strictly comply with the priorities in section 403, by requiring us to review amendments to the AML inventory, by granting us the authority to unilaterally certify the completion of coal problems, and by restricting the use of prior balance replacement funds to address coal problems under section 403. 30 U.S.C. 1232(g)(2), 1233(c), 1240a(a)(A), and 1240a(h)(1)(D)(ii).

Given these new funding directives and our enhanced oversight responsibilities, we believe that limiting the number and types of Priority 3 projects that could be addressed under the ''in conjunction with'' provision is consistent with the intent of SMCRA, as revised by the 2006 amendments. To ensure that high priority site reclamation is promoted while we observe our long term commitment to eliminate all coal problems, we are proposing that you may use State or Tribal share funds or historic coal funds to reclaim Priority 3 sites even if you have not completed all Priority 1 and Priority 2 problems if the reclamation of those sites facilitates the reclamation of Priority 1 and 2 problems or if you determine that there would be reasonable savings towards the objective of reclaiming all Priority 3 land and water problems.

Generally, we would expect reasonable savings to be composed of a number of reduced expenditures in project development and construction, such as reduced design costs, reduced mobilization and demobilization charges, reduced unit prices, and administrative efficiencies, and that as the Priority 3 work increases in size or cost, the amount of potential savings would diminish. As part of our oversight and inventory management responsibilities, we will review individual State or Indian tribe determinations under § 874.13(b)(2)(ii) that the reclamation of specific Priority 3 lands and waters is appropriate because they facilitate reclamation or provide reasonable savings towards the long-term objective of reclaiming all coal problems.

We do not believe that our efforts to define the use of ''in conjunction with'' will significantly reduce the types of Priority 3 projects that are reclaimed. While our proposed § 874.13(b)(2) is intended to address Priority 3 reclamation undertaken as part of the process of developing and undertaking traditional reclamation projects under 403(a) of SMCRA, there are a number of activities that are performed by reclamation programs to address eligible lands and waters that are not subject to this provision, including water supply restoration, the 30 percent set-aside for AMD projects, the use of prior balance replacement funds, projects authorized under the AML Enhancement Rule, Appalachian Clean Streams projects, Watershed Cooperative Agreement projects, and any AML sites reclaimed under the remining incentives provided under section 415 of SMCRA, as revised by the 2006 amendments. These activities primarily address Priority 3 lands and waters but are not affected by the limitation contained in § 874.13(b)(2) for a variety of reasons. Water supply restoration projects and the AMD 30 percent set-aside program are authorized by sections 403(b) and 402(g)(6)(A) of SMCRA, respectively. 30 U.S.C. 1233(b) and 1232(g)(6)(A). Prior balance replacement funds may be used for Priority 3 reclamation because they are specifically directed to be used for the purposes of section 403 of SMCRA, as provided in § 872.31. Although funded from the Federal expense share of the Fund, Appalachian Clean Streams projects and Watershed Cooperative Agreement projects are authorized through specific Congressional appropriations. AML Enhancement Rule projects were established through a specific rulemaking process where the Secretary used the powers and authority

under section 413(a) of SMCRA to provide States and Indian tribes with the authority to reduce project costs to the maximum extent practicable on abandoned mine sites which have deposits of coal or coal refuse remaining. 30 U.S.C. 1242(a); *see also* 64 FR 7470. Qualifying sites are specifically provided for as an exception to SMCRA under section 528. 30 U.S.C. 1278. Neither section 413(a) nor section 528 was revised by the 2006 amendments, and we do not believe anything in the 2006 amendments would affect the existing AML Enhancement Rule. Finally, many of the AML sites that may be reclaimed pursuant to the remining incentives contained in the 2006 amendments would be Priority 3 sites. These remining incentives are specifically authorized by section 415 of SMCRA, as amended. In conclusion, while our proposed requirements at § 874.13(b)(2) would prevent the reclamation of some stand-alone Priority 3 sites previously undertaken as part of the traditional reclamation program, the programs discussed above would still offer many Priority 3 land and water reclamation opportunities.

We welcome all comments on how these regulations should incorporate section 402(g)(7) of SMCRA, as amended. Specifically, we encourage comments on how we should promote the responsible reclamation of Priority 3 lands and waters while we advance the objectives of reclaiming all Priority 1 and 2 health and safety problems within the administrative boundaries of each approved AML program. We also encourage comments relating to the standards that we have proposed in § 874.13(b) for Priority 3 sites reclaimed in conjunction with past, present, and future Priority 1 and 2 projects. We recognize there is a likelihood of confusion because ''conjunction'' typically means an ''occurrence together in time and space.'' (Merriam-Webster Collegiate Dictionary, 11th ed. 2003). Thus, we would particularly like to encourage comments on how we can be consistent with the statutory standard while minimizing confusion.

Our proposed § 874.13(b)(2) contains only a general direction that qualifying Priority 3 work should either facilitate the higher priority work or represent reasonable savings towards the goal of reclaiming all Priority 3 coal problems. Thus, we are also seeking comments on possible alternatives or refinements to our proposal. We would like your opinion on whether Priority 3 work requested by a property owner as a condition of his or her agreement to provide written entry to address health and safety problems should fall within the scope of paragraph (b)(2)(i). What kinds of activities do you think should be considered as facilitators of higher priority reclamation? Also, what kinds of cost savings should be considered as ''reasonable'' for our proposed § 874.13(b)(2)(ii)? Should there be any restrictions on the types of Priority 3 problems or overall cost under § 874.13(b)(2)? Given that States and Indian tribes can set aside up to 30 percent of State share or Tribal share funds and historic coal funds for AMD trusts under section 402(g)(6) of SMCRA, should there be any restrictions on the expenditure of moneys from the Fund for Priority 3 AMD projects when applying the ''in conjunction with'' provision? Should the construction of permanent facilities with perpetual treatment costs qualify? Should the expenditures for Priority 3 reclamation be allowed to exceed the cost of reclaiming the Priority 1 and 2 problems? Should there be any physical or administrative barriers, such as watershed or mine permit boundaries, property lines, or environmental constraints associated with § 874.13(b)(2)?

Water Supply Restoration (§ 874.14)

We propose to change the title of this section from ''Utilities and other facilities'' to ''Water supply restoration'' in order to reflect more accurately the purpose of this section and the changes made by the 2006 amendments to section 403(b) of SMCRA. The existing title of this section, ''Utilities and other facilities,'' related to former section 403(a)(4) of SMCRA, which made certain public facilities eligible for reclamation. This was sometimes referred to as ''Priority 4'' reclamation. The 2006 amendments removed section 403(a)(4) and retitled section 403(b) ''Water Supply Restoration.'' We are changing this section in a similar fashion.

We note that the language similar to ''utilities and other facilities'' is also used to describe some noncoal restoration work that may be completed by certified States and Indian tribes under § 875.15(c). We do not propose to change the language of § 875.15 because the scope of that section involves certified States and Indian tribes using funds that are not subject to section 403(b) for utilities, roads, and other community infrastructure. Unlike § 875.15, however, this section only applies to water supplies adversely affected by coal mining in uncertified States and Indian tribes.

We are proposing to revise paragraph (a) of this section, consistent with the 2006 amendments, to remove the 30 percent limitation on grant funds that States and Indian tribes may expend on water supply restoration. Beginning with grants awarded on or after December 20, 2006, uncertified States and Indian tribes may expend any or all of their grants from State or Tribal share funds, historic coal funds, and prior balance replacement funds for water supply restoration. Prior balance replacement funds are eligible for such expenditures because they are specifically directed to be used for the purposes of section 403 of SMCRA. States and Indian tribes may use minimum program makeup funding for water supply projects as long as they represent Priority 1 or 2 problems. Expenditures for water supply restoration are an optional feature of the reclamation program, and uncertified States and Indian tribes can decide to what extent they want to expend funds for water supply projects. The remainder of the existing section, including eligibility of projects, would remain the same.

Contractor Eligibility (§ 874.16)

We are proposing revisions to § 874.16 to reflect our proposed changes to the funding applicability section in § 874.11. Our proposed change would impose the requirement that successful bidders for an AML contract must also be eligible under §§ 773.12, 773.13, and 773.14 to receive a permit or be provisionally issued a permit to conduct surface coal mining operations at the time of the contract award to conduct reclamation projects using moneys from the Fund, prior balance replacement funds provided to uncertified States and Indian tribes under § 872.29, or a combination of both types of AML funds.

*Part 875—Certification and Noncoal Reclamation*

We propose to amend the title of this Part to more accurately describe the subject matter covered by these regulatons. Also, our proposed revisions to this Part contain an addition of a new definition section at § 875.5 and changes to existing §§ 875.11 (Applicability), 875.12 (Eligible lands and water prior to certification), 875.13 (Certification of completion of coal sites), 875.14 (Eligible lands and water subsequent to certification), 875.16 (Exclusion of certain noncoal reclamation sites), and 875.20 (Contractor eligibility). These revisions propose changes to fund applicability, certification procedures, and how certified States and Indian tribes must address remaining or newly discovered coal problems. One

substantive change we propose is to acknowledge that this Part may not apply to certified States and Indian tribes when they expend certified in lieu funds and prior balance replacement funds received under section 411(h) of SMCRA. Consistent with revised Part 884, certified States and Indian tribes may choose to modify their reclamation plan to expend funding on activities not related to the reclamation of noncoal mine problems, or to undertake noncoal reclamation outside the framework of this Part.

In addition to requesting your comments on the sections discussed below, we are also seeking comments on any other sections within this Part that you may feel are affected by our proposed changes or the 2006 amendments. For example, we are not revising any of the language in § 875.15 (Reclamation priorities for noncoal program) because we believe that fund applicability requirements in Part 872 along with any reclamation plan revisions completed under Part 884 will properly define how the section applies to a project conducted by a certified program under this Part. In addition, we are making revisions to § 875.20 (Contractor eligibility) to make clear that contractor eligibility requirements for certified States and tribes only apply to coal reclamation work. We did not revise this section to address the applicability of certified in lieu or prior balance replacement funds received by certified States and Indian tribes because we believe that matter is addressed best through revisions to the reclamation plan under Part 884. We are interested in any comments you may have concerning that approach.

Definitions (§ 875.5)

We propose to add a new section to Part 875 to include the definition of the term ''Reclamation plan or State reclamation plan.'' The definition is identical to that in proposed § 872.5.

Information Collection (§ 875.10)

We propose only to reword this paragraph using plain English and to use the current format approved by the OMB. It describes OMB's approval of information collections in Part 875, our use of that information, and the estimated reporting burden associated with those collections.

Applicability (§ 875.11)

Except in connection with the sources of funding that may be used for reclamation, our proposed revisions to this section make minimal changes for uncertified States and Indian tribes with approved reclamation plans. Generally, our proposed changes relate to the use of certified in lieu funds and prior balance replacement funds by certified State and Indian tribes because, as explained in Part 872 (Moneys Available to Eligible States and Indian Tribes) and Part 884 (State Reclamation Plans), certified States are not required to spend these funds according to Part 875.

In paragraph (a) we are proposing that when you, an uncertified State or Indian tribe, expend State share funds, Tribal share funds, and historic coal funds for noncoal reclamation, you are subject to the limitations on the use of those funds contained in this Part and in proposed §§ 872.16, 872.19, or 872.23. This portion of our proposal does not change the existing requirements and is consistent with section 409 of SMCRA, which requires that moneys provided by sections 402(g)(1) and (g)(5) of SMCRA may be used to address high priority noncoal hazards at the request of the Governor or governing body of an Indian tribe. 30 U.S.C. 1239(b) and (c). We did not include minimum program makeup funds or prior balance replacement funds as a source of moneys that uncertified States may use for noncoal reclamation under this Part for the reasons discussed in the preamble to proposed §§ 872.28 and 872.31, respectively.

In paragraph (b) we are proposing that you, a certified State or Indian tribe, may use prior balance replacement funds provided to you under § 872.29 and certified in lieu funds provided to you under § 872.32 to address eligible coal problems to maintain certification as required by §§ 875.13 and 875.14.

As discussed in the preamble to proposed § 872.34, before proposing this regulation, we also considered an alternative where Part 875 requirements would apply to certified in lieu funds received under § 872.32, but not to prior balance replacement funds unless so directed by the State legislature or Tribal council. Under this alternative approach, certified States and Indian tribes would continue to conduct noncoal reclamation under this Part and would be mandated to use certified in lieu funds for the reclamation of lands or water affected by the mining of minerals and materials other than coal. Reclamation programs would be required to follow the eligibility requirements of § 875.14, the priorities of § 875.15, the requirements related to land acquisition in § 875.17, the contractor eligibility provision in § 875.20, and the limited liability aspects of § 875.19. Overall, this alternative approach would require that the certified States and Indian tribes use their certified in lieu funds to address mining related impacts inside their boundaries. We specifically request comments on this alternative approach.

Eligible Lands and Water Prior to Certification (§ 875.12)

We are proposing minor revisions to § 875.12. We are revising the title using plain English. In addition, we are revising § 875.12(c) so that the word ''monies'' will become ''moneys.'' Finally, we are removing the reference to former Part 888. None of these revisions result in substantive changes in the application of the paragraph.

Certification of Completion of Coal Sites (§ 875.13)

We are proposing some minor changes to paragraph (a) of this section that do not result in any change in the authority or scope of the existing regulation. We are revising the introductory paragraph to create a lead sentence that clearly states that certification is for the completion of coal sites, and to reword it using plain English. In § 875.13(a)(1), we are eliminating the reference to Priorities 4 and 5 of section 403(a) of SMCRA because the 2006 amendments removed Priorities 4 and 5. 30 U.S.C. 1233(a). No changes were made in paragraphs (a)(2) and (a)(3) of this section.

We are proposing to add a new paragraph (d) under § 875.13 that would allow us, on behalf of the Secretary of the Interior, to make the certification of completion of coal reclamation projects without a certification request from the Governor of a State or the equivalent head of an Indian tribe. This paragraph is needed in order to be consistent with section 411(a)(2) of SMCRA, as revised by the 2006 amendments. 30 U.S.C. 1240a(a)(2). Our proposed paragraph (d) requires a determination by the Director of OSM based upon the information in the AML inventory that all coal reclamation projects in your State or Tribal jurisdiction, which meet the priorities described in § 874.13(a), have been completed. We also propose, consistent with section 411(a) of SMCRA, to require an opportunity for public comment, announced through the **Federal Register**, before we certify a State or Indian tribe.

Furthermore, we believe that we have the authority to suspend or remove certification from a State or Indian tribe that is unable or unwilling to address coal problems once they are known to exist after certification. At this time we have not proposed specific language to set forth a certification suspension or removal process. However, we request comment on whether we should add a

suspension or removal process in these regulations, and if so, where such a provision should be added and what it should contain.

Eligible Lands and Water Subsequent to Certification (§ 875.14)

We are proposing revisions to the introductory paragraph of § 875.14(a) and paragraph (a)(1) to clarify eligibility dates for noncoal reclamation performed on Federal lands, waters, and facilities under the jurisdiction of the Forest Service and the Bureau of Land Management. We are also revising the title and the section using plain English. There is no substantive change in the applicability or scope of these paragraphs.

We are proposing § 875.14(b) to clarify the timing of reclamation efforts and the sources of funds that may be used to address coal problems after certification. Under existing § 875.14(b), you, the certified State or Indian tribe, are required to address coal problems no later than the next grant cycle, subject to the availability of funds distributed. Under our proposed changes you must submit to us a plan that describes the approach and funding sources that you will use to address any coal problems in a timely manner. While we are not requiring you to use certified in lieu or prior balance replacement funds, we anticipate that those sources will most likely be identified in any plans submitted to us. Plans submitted to us will be reviewed to ensure they represent a timely approach to reclamation of existing coal problems, and we will monitor your progress towards completion of the plan. We are retaining the requirement that any coal reclamation projects, regardless of funding source, must conform to sections 401 through 410 of SMCRA. 30 U.S.C. 1231–1240.

We are interested in receiving comments on our proposed revisions to this section. We would like to receive comments on how we might review any plans submitted and how we might make determinations that the plans represent timely approaches to addressing remaining coal reclamation. We would also like comments on whether we should require the plans submitted under this section to be reviewed and processed as part of a formal reclamation plan amendment under § 884.15.

Exclusion of Certain Noncoal Reclamation Sites (§ 875.16)

We are proposing revisions to § 875.16 to exclude you, an uncertified State or Indian tribe, from expending moneys from the Fund or prior balance replacement funds provided under § 872.29 for the reclamation of sites and areas designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. 7901 *et seq.*, or that have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. 9601 *et seq.* Our proposal is to maintain consistency with the existing prohibitions on the use of moneys from the Fund and the statutory restrictions on the use of prior balance replacement funds as explained in the preamble to § 872.29. Certified States and Indian tribes may use prior balance replacement funds or certified in lieu funds for these purposes provided they comply with the general statutory and regulatory restrictions of those funds. We are also rewording this section using plain English. We invite you to comment on whether this paragraph is still needed.

Contractor Eligibility (§ 875.20)

We are proposing revisions to § 875.20 for clarity and to limit its applicability. We removed the phrase ''To receive AML funds for noncoal reclamation'' to clarify that prior balance replacement funds received by uncertified States and Indian tribes are also subject to the restrictions of this section. Contracts by certified States and Indian tribes are also subject to the restrictions of this section when used to address coal problems as necessary to maintain certification. However, this section is not intended to apply to use of section 411(h) funds by certified States and Indian Tribes for any purpose other than coal AML reclamation.

*Part 876—Acid Mine Drainage Treatment and Abatement Program*

Along with some minor changes, we are proposing three major changes to this Part consistent with the 2006 amendments. First, to comply with amended section 402(g)(6)(A), we propose to raise the previous 10% limitation on grants for AMD abatement and treatment set-asides to 30% of annual State or Tribal share and historic coal funds. Second, we propose to specify the requirements for an uncertified State or Indian tribe to establish an AMD abatement and treatment fund. Third, we propose to eliminate the requirements for a State or Indian tribe to prepare AMD abatement and treatment plans and for those plans to be approved by the Director of OSM.

The decision by an uncertified State or Indian tribe to establish an AMD abatement and treatment fund, or to deposit moneys into an established fund, is optional. Section 403(a) of SMCRA established health and safety coal AML problems as the top two priorities for reclamation programs. SMCRA, as revised by the 2006 amendments, provides uncertified States and Indian tribes with a mechanism for abating AMD while working on high priority reclamation projects, if the water resources are adjacent to a high priority problem. 30 U.S.C. 1233(a)(1)(B)(ii) and (a)(2)(B)(ii). We are seeking comments on this section and under § 874.13 as to whether AMD abatement and treatment should be included in the types of Priority 3 reclamation projects subject to the ''adjacent to'' and ''in conjunction with'' provisions discussed in § 874.13.

Information Collection (§ 876.10)

We propose only to reword this paragraph using plain English and to use the current format approved by the OMB. It describes OMB's approval of information collections in Part 876, our use of that information, and the estimated reporting burden associated with those collections.

Eligibility (§ 876.12)

In the first sentence of paragraph (a), we propose to delete the reference to the three year time limit for grant expenditures. The 2006 amendments provide for different time limits based on the FY in which the funds were distributed. Detailing the time restrictions in this Part is unnecessary because the limits are set out in section 402(g)(1)(D) of SMCRA and § 886.14. Also in this sentence, we propose to raise the existing 10% cap on deposits to AMD abatement and treatment funds to 30%, as required by the 2006 amendments, and to make minor revisions using plain English. We have proposed to delete paragraph (a)(1) because it referred to the future reclamation set-aside fund, which is addressed in proposed Part 873. Therefore, we have moved the requirement that States and Indian tribes create the AMD funds under their State or Tribal law, which is located in existing paragraph (a)(2), to the text of the last sentence of proposed § 876.13(a).

In addition, we have revised this subsection to clarify that section 402(g)(6) of SMCRA establishes that the only moneys from the Fund that you may set aside for AMD treatment under this section are those that you receive as State or Tribal share funds under section 402(g)(1) of SMCRA, §§ 872.14 and 872.17, or as historic coal funds under section 402(g)(5) of SMCRA, § 872.21. Therefore, the funds you

receive as minimum program make up funds under § 872.26 and prior balance replacement funds under § 872.29, may not be set aside under this Part. As indicated in our discussion of § 872.29, we believe that section 411(h)(1) of SMCRA clearly requires uncertified States and Indian tribes to use prior balance replacement funds only for the purposes of section 403 of SMCRA. We have also explained that generally up to 10% of the funds we awarded to you before December 20, 2006, may be deposited into an AMD abatement and treatment fund.

We have proposed to eliminate former paragraph (b), because it required States and Indian tribes to spend their AMD abatement and treatment funds according to a plan approved by the Director. Under the 2006 amendments, the requirements to prepare a plan, consult with the Natural Resources Conservation Service, or get the Director's approval were eliminated, so paragraph (b) is no longer needed.

We propose adding a new paragraph (b) that requires an uncertified State or Indian tribe to establish a special fund account providing for the earning of interest as required by section 402(g)(6)(A) of SMCRA. U.S.C. 1232(g)(6)(A). This AMD fund must specify that moneys in it may only be used for the abatement of the causes and the treatment of the effects of AMD in a comprehensive manner. We used the modifier ''comprehensive'' in the regulatory text of proposed paragraph (b)(2) because we propose to delete § 876.13 where ''comprehensive abatement of the causes and treatment of the effects of acid mine drainage'' was previously contained.

Also, paragraph (b)(2) requires AMD abatement and treatment projects to occur within ''qualified hydrologic units.'' We propose to define ''qualified hydrologic unit'' in new paragraph (c). We removed this definition from existing § 870.5 of this chapter and added it to this section for clarity and ease of use because the phrase is used only in this section. In addition, we reworded the definition slightly in an attempt to make it easier to understand. We also propose to add a new paragraph (d) providing that deposits into the State or Tribal AMD accounts are considered State or Indian tribal moneys.

Plan Content (§ 876.13)

We propose to remove this section because the 2006 amendments eliminated the previous requirement for States and Indian tribes to prepare AMD abatement and treatment plans.

Plan Approval (§ 876.14)

We also propose to remove this section because the 2006 amendments eliminated the previous requirement for the Secretary to approve AMD abatement and treatment plans that were prepared by the States and Indian tribes.

*Part 879—Acquisition, Management, and Disposition of Lands and Water*

Definitions (§ 879.5)

We propose to add a new section to Part 879 to include the definition of the term ''Reclamation plan or State reclamation plan.'' This definition is identical to the one contained in proposed § 872.5.

Information Collection (§ 879.10)

We propose to remove § 879.10 because the information collection requirements contained in Part 879 have been approved by OMB under the grants provisions for Part 886 and assigned clearance number 1029–0059.

Land Eligible for Acquisition (§ 879.11)

In addition to minor plain English revisions, this proposed section is modified to incorporate the appropriate references to prior balance replacement funds received by uncertified programs under section 411(h)(1) of SMCRA and § 872.29. We are proposing to revise § 879.11(a), (b), and (c) to remove references that restrict land acquisition to moneys that States and Indian tribes receive from the Fund because the prior balance replacement funds to uncertified States are derived from the Treasury. We believe that uncertified States and Indian tribes can use prior balance replacement funds to acquire land as part of their obligation under section 411(h)(1)(D)(ii) to use the moneys for the purposes described in section 403 of SMCRA.

We are also proposing to move the definition of ''permanent facility'' from § 870.5 to § 879.11(a)(2) for clarity and ease of use because that term is primarily used in that section. In addition, we modified the definition slightly by changing the phrase ''any manipulation or modification of the surface'' to ''any manipulation or modification of the site'' to accommodate the possibility that permanent facilities may not always be located on the surface of the land. Some permanent facilities may be located underground to control drainage or prevent AMD.

While our revisions indicate that this proposed section only applies to uncertified States and Indian tribes and us, we are seeking comment on how this Part would be implemented under certified State and Indian tribal reclamation plans that commit certified in lieu funds, prior balance replacement funds, or both towards the reclamation of noncoal problems under the requirements of Part 875. For example, we would like to receive comments on how land acquisition, management, and disposal requirements would apply to certified programs using prior balance replacement funds or certified in lieu funds under §§ 872.29 and 872.32, respectively. Furthermore, we would like comments on how to handle any proceeds resulting for the disposition of property by certified States and Indian tribes when implementing § 879.15.

Disposition of Reclaimed Land (§ 879.15)

We propose to revise the language in existing § 879.15 to remove the provision (h) which states that ''all moneys received from disposal of land under this Part shall be deposited in the appropriate Abandoned Mine Reclamation Fund in accordance with 30 CFR Part 872 of this chapter.'' We propose to replace this provision with the requirement that funds be returned to us, and that we will implement the requirements of §§ 885.19 and 886.20. Proposed §§ 885.19 and 886.20 direct the disposition of unused funds, particularly those that are deobligated. This revision is necessary because States and Indian tribes may acquire land with moneys from the Fund or from the Treasury when implementing coal and noncoal reclamation under their approved reclamation plan.

*Part 880—Mine Fire Control*

Definitions (§ 880.5)

We propose to add a new section to Part 880 to include the definition of the term ''Reclamation plan or State reclamation plan.'' This definition is identical to the one contained in proposed § 872.5.

*Part 882—Reclamation on Private Land*

Information Collection (§ 882.10)

We propose only to reword this paragraph using plain English and to use the current format approved by the OMB. It describes OMB's approval of information collections in Part 882, our use of that information, and the estimated reporting burden associated with those collections.

Liens (§ 882.13)

Consistent with the 2006 amendments' revision of section 408(a) of SMCRA, in paragraph (a)(1) we propose to remove the authority for

liens to be placed against property for the sole reason that the owners purchased the property after May 2, 1977. 30 U.S.C. 1238(a). We are also replacing the word ''shall'' with ''must'' in accordance with plain English.

*Part 884—State Reclamation Plans*

With the exception of § 884.11 and § 884.17, both discussed specifically below, and the addition of a definitions section at § 884.5, we are not proposing any changes to the regulations under Part 884. However, we do want to clarify and seek comments on the implementation of Part 884 provisions as they relate to the prior balance replacement funds and certified in lieu funds as discussed in the preamble to Part 872.

As discussed under Part 872, prior balance replacement funds and certified in lieu funds provided under sections 411(h)(1) and 411(h)(2) of SMCRA, respectively, are Treasury funds and not moneys from the Fund. Consistent with the language of section 411(h)(1), we are proposing revisions to Part 872 that specify that 411(h)(1) funds are to be used by uncertified States and Tribes for the purposes of section 403 of SMCRA and by certified States and Tribes for purposes established by the State legislature or Tribal council with priority given to the impacts of mineral development. In addition, our revised Part 872 proposes that certified programs may use certified in lieu funds for any purpose, even purposes not covered by this subchapter.

In light of these changes to Part 872, we propose to clarify in Part 884 that the requirement to maintain an approved reclamation plan continues to apply to all States and Indian tribes, regardless of certification status under section 411(a) of SMCRA. This proposed clarification is consistent with section 405(h) of SMCRA which requires a State or Indian tribe to have an approved reclamation plan to receive a grant. 30 U.S.C. 1235(h).

Because certified and uncertified States and Indian tribes will receive funding from different sources (the Fund and Treasury funds) and for different purposes, we expect that their reclamation plans may vary in scope and content. For example, prior balance replacement funds provided to uncertified States and Indian tribes must be used for the purposes of section 403 of SMCRA and are not subject to the Priority 3 reclamation restrictions under section 402(g)(7). Because we have historically interpreted section 403 of SMCRA to mean that expenditures must ''reflect the * * * priorities in the order stated,'' the reclamation plans for uncertified programs may reflect different approaches to addressing Priority 3 problems with prior balance replacement funds.

Under these proposed rules, the reclamation plans for certified programs will potentially show an even greater range of variability with little specificity required beyond undertaking the coal work necessary to maintain certification. In addition, if certified States and Indian tribes choose to conduct noncoal reclamation in accordance with Part 875 using certified in lieu funds or prior balance replacement funds, their reclamation plan must continue to provide all of the information and the assurances that are central to operating under the Part 875 umbrella. Only under these circumstances could State or Indian tribe noncoal reclamation activities continue to enjoy the protection of the limited liability provisions of § 875.19 for those efforts.

On the other hand, certified programs may also modify their reclamation plans to disclose how they would commit their grant funding to purposes other than noncoal reclamation in accordance with Part 875. In such instances, reclamation plans must contain the basic information needed for these programs to continue to receive grants, disclose how any existing or newly discovered coal problems will be addressed, and contain descriptions in sufficient detail to demonstrate that activities to be funded do not fall under the reclamation objectives of subchapter R.

Because our proposed changes and clarifications under this and other Parts represent a change in application of reclamation plan requirements, we are seeking your comments on how we should implement the Part 884 requirements for certified and uncertified States and Indian tribes. We would like your comments on the types of information you believe that uncertified programs and certified programs should maintain in approved reclamation plans.

Definitions (§ 884.5)

We propose to add a new section to Part 884 to include the definition of the term ''Reclamation plan or State reclamation plan.'' This definition is identical to the one contained in proposed § 872.5.

State Eligibility (§ 884.11)

Existing § 884.11 requires a State with eligible lands and water to submit a reclamation plan, which we cannot approve unless the State has an approved regulatory program that is consistent with other requirements of SMCRA and its implementing regulations except as discussed below. We are proposing several revisions to this section. First, we are updating the citation to the definition of ''eligible lands and water'' because we have proposed to move that definition from § 870.5 to § 700.5. In addition, we are adding the appropriate reference to Indian tribes because section 405(k) of SMCRA authorizes the Navajo, Hopi, and Crow Indian tribes to have an approved reclamation plan without having an approved regulatory program. 30 U.S.C. 1235(k); see also 30 CFR Part 756.

More substantively, we also want to use this proposed section to clarify how Tennessee and Missouri are affected by this requirement to have and maintain a reclamation plan in light of the statutory direction under section 402(g)(8) of SMCRA, as revised by the 2006 amendments. As discussed in the preamble to § 872.26, section 402(g)(8)(A) of SMCRA provides that each State and Indian tribal reclamation program will receive a minimum amount of funding to address Priority 1 and 2 problems. Section 402(g)(8)(B) states that the minimum program make up funding will apply to Tennessee and Missouri ''notwithstanding any other provision of law.'' 30 U.S.C. 1232(g)(8)(B). Previously, we did not award reclamation grants to States when they no longer maintained an approved regulatory program under section 503 of SMCRA.

We believe that the 2006 amendments now mandate that Tennessee and Missouri receive minimum program make up funding under section 402(g)(8)(A), and that they should receive grants in spite of the section 405(c) requirement to have an approved State regulatory program under section 503 of SMCRA. We propose to clarify in § 884.11 that so long as Tennessee and Missouri maintain an approved reclamation program, they may receive grants and modify their reclamation plans as long as the funds are necessary according to section 402(g)(8)(A) of SMCRA. We are interested in receiving your comments on our provisions and preamble discussion relative to providing section 402(g)(8) funding to Tennessee and Missouri.

Other Uses by Certified States and Indian Tribes (§ 884.17)

The proposed revisions to paragraph (b) of this section change the grant application reference from § 886.15 to § 885.13 to be consistent with our proposal to create a new Part 885 for certified State and Indian tribal program

grant application procedures. Under our proposed regulations, certified States and Indian tribes have significant discretion in how to use certified in lieu or prior balance replacement funds. Therefore, we have changed the heading and wording of this section to reflect that greater discretion.

*Part 885—Grants to Certified States and Indian Tribes*

We propose to add this new Part to provide different rules for Title IV grants to certified States and Indian tribes. Previously, Title IV grants to all States and Indian tribes were administered pursuant to Part 886. This Part recognizes that the 2006 amendments gave certified States and Indian tribes broad authority and discretion over grant activities and expenditures. In proposed § 872.31, we propose that certified States and Indian tribes may spend prior balance replacement funds for the purposes established by the State legislature or the Tribal council with priority given to addressing the impacts of mineral development. In addition, § 872.34 allows certified States and Indian tribes to spend certified in lieu funds for any purpose. Because of the wide flexibility and discretion given to States and Indian tribes in the 2006 amendments, we recognize that certified States and Indian tribes should not be required to comply with all the restrictions governing uncertified States and Indian tribes using AML funds under existing Part 886. Instead, we have drafted Part 885 to reflect OSM's limited role after coal reclamation is completed.

What does this Part do? (§ 885.1)

This proposed section specifies that this Part provides procedures for grants to certified States and Indian tribes only. It includes a reference to OSM's guidance on reclamation programs (66 FR 31250), but provides it as an optional information source that certified States and Indian tribes may use if they choose to conduct reclamation projects.

Definitions (§ 885.5)

We propose this section to include definitions of the terms ''award,'' ''distribute,'' and ''reclamation plan or State reclamation plan.'' These definitions are identical to those in proposed § 872.5.

Information Collection (§ 885.10)

The information collection section refers to all Title IV grants because we currently have an information collection clearance from OMB for existing Part 886, which covers all Title IV grants to all eligible certified and uncertified States and Indian tribes. We propose to change Part 886 by limiting it to grants to uncertified States and Indian tribes and to add new Part 885 for grants to certified States and Indian tribes. Though the information collection burden for grants will be split between the two Parts, the total burden will remain the same. We expect to notify OMB of the change and to reflect both Parts in future clearance actions.

Who is eligible for a grant? (§ 885.11)

This proposed section establishes that only certified States or Indian tribes with an approved reclamation plan are eligible for grants under this Part. We believe that certified States and Indian tribes are still required by section 405 of SMCRA to have an approved reclamation plan in order to receive grants under SMCRA.

What can I use grant funds for? (§ 885.12)

This proposed section describes how you, a certified State or Indian tribe, may use funds awarded in Title IV grants. Paragraph (a) proposes that grant funds awarded to certified States and Indian tribes can only be used for activities authorized in SMCRA and either included in your reclamation plan or described in your grant application. The description in the plan or application may be very general; for example, we expect that a certified State could amend its plan to specify that it will expend prior balance replacement funds for purposes established by the State legislature, with priority given to addressing the impacts of mineral development. In addition, we propose to include the option of describing activities in the grant application in order to provide you with a method to request funds under the new authorities in the 2006 amendments before your plan has been amended. This paragraph also allows you to choose to use these grant moneys to administer your program.

Paragraph (b) provides that you may use grant funds in the ways established for each type of funding you receive. It describes the types of funds and refers you to the sections in Part 872 of this chapter describing how you may use the various types of funds. We expect most funding for certified States and Indian tribes to come from prior balance replacement funds and certified in lieu funds. We are including a provision in this paragraph to allow you to receive and use other moneys from the Fund because we recognize that you may still have State share or Tribal share funds that were distributed to you before October 1, 2007, but not awarded or expended. We do not plan to use the provision in section 401(f)(3)(B) of SMCRA that certified States and Indian tribes are no longer eligible to receive State or Tribal share funds after October 1, 2007, retroactively to take back funds that were already distributed to you before that date. These moneys from the Fund will still be subject to noncoal reclamation rules in Part 875.

Paragraph (c) proposes that you may use grant funds for any costs determined to be allowable under OMB's cost principles.

What are the maximum grant amounts? (§ 885.13)

Proposed paragraph (a) allows you to apply for a grant of any or all available funds at any time.

Paragraph (b) states how we determine the amount of Title IV funds available to your State or Indian tribe, which is:

- The current annual AML distribution;
- Plus any funds distributed in previous years that were not awarded in a grant;
- Plus any funds distributed in previous years that were awarded but were subsequently deobligated from a grant; but
- Minus any funds already awarded to you this fiscal year.

Paragraph (c) provides that current FY funds will not be available for award until after we complete the annual distribution, which will occur after we receive fee collections for coal produced in the final quarter of the previous fiscal year.

Paragraph (d) requires us to give you current information on the amounts and types of funds that are available for award. In the immediate future, we expect to meet this requirement by providing a report similar to our current share balance report to you whenever you request it, but the report and the process will likely change over time. If you have suggestions about how we can better meet your financial information needs, we encourage you to comment.

How long is my grant? (§ 885.14)

The performance period of your grant will be the period of time you request in your grant application. This proposed section does not establish any requirements for how long your grants should be or how many grants you may have open at any time. The proposed rule would allow you to change the pattern under Part 886 of annual awards of new grants with one year for administrative costs and three years for project costs. However, we are concerned about the administrative

burden of managing grants which are open for very long periods. We would appreciate your comments on this proposal. If we were to set a period limitation, would you prefer 3 years, 5 years, 10 years, or some other period?

How do I apply for a grant? (§ 885.15)

In this section, we are proposing the application procedures for certified States and Indian tribes to receive Title IV grant awards. Our goal is to make these procedures as brief and simple as possible. We encourage your suggestions for further streamlining these procedures.

Paragraph (a) mandates that you must use the application forms and procedures that we specify. We are not proposing to specify in these rules exactly what information we will require because the information we need is likely to evolve over time based upon changing laws and OMB requirements for Federal grants. Based on current grant requirements, we expect that your current application will include:

(1) Cover page, the government-wide SF–424 form or an electronic equivalent, with a signature or electronic approval, and summary information about you and the proposed project, which we need to complete reports which we are required to make public on all assistance awards;

(2) High-level budget breakdown separating the award into general categories or subaccounts, such as noncoal reclamation costs and non-reclamation activity costs, which we need to enter the award into our accounting system and generate national information on Title IV program funds;

(3) Narrative explanation of your program, which may be as brief as ''carry out our approved reclamation plan''; and

(4) Certifications and assurances required by law. You must certify that you meet legal requirements for lobbying, drug-free workplace, and debarment and suspension. You must assure us that you will comply with Federal laws and regulations such as nondiscrimination statutes.

Paragraph (b) requires us to award your grant agreement as soon as practicable, but no later than 30 days after we receive your complete application. This timeline is reduced from 60 days in Part 886 for uncertified States and Indian tribes because we expect it will take us less time to process awards to you. Paragraph (c) proposes that if your application is not complete, we must notify you as soon as practicable of what additional information we need to process the award. Paragraph (d) proposes that you agree to perform the grant in accordance with SMCRA, all applicable Federal laws, including nondiscrimination statutes, and applicable Federal regulations, including those issued by OMB and Treasury.

After OSM approves my grant, what responsibilities do I have? (§ 885.16)

This proposed section covers the formal grant agreement and your operations under it. Paragraph (a) requires us to send you a written grant agreement when we award you a grant. The agreement sets out the terms of the award, such as the amount of funds and the grant beginning and ending dates. Paragraph (b) provides that you may subgrant functions and funds to other organizations, but that you will still be responsible for administration of the grant, including funds and reporting. Paragraph (c) provides that funds are obligated when we approve the grant agreement. It goes on to provide that you accept the grant by starting work or drawing down funds under it. This is a change from the procedure in the existing Part 886 that requires you to countersign the award and return it to us to document your acceptance of the grant.

In paragraph (d), we are proposing that you are responsible for ensuring that all applicable laws, clearances, permits, or requirements are met before you expend funds. This provision is intended as a new requirement for certified States and Indian tribes conducting activities other than coal reclamation under our regulations in Part 874 of this chapter. A certified State or Indian tribe has very wide discretion over the use of grant funds. When you conduct activities other than coal reclamation as necessary to maintain certification, you will decide which activities to fund. Because no Federal decision authorizing individual expenditures will be made, OSM will not conduct or approve NEPA or other clearance procedures for such activities. In contrast, paragraph (e) proposes that when you reclaim coal projects under our regulations in Part 874, we are jointly responsible with you for compliance with NEPA and any other laws, clearances, permits or requirements. This alternate provision is the same as the existing requirement for grants under Part 886. We believe that OSM has responsibility and involvement for compliance matters only for coal reclamation projects meeting our regulations in Part 874.

Proposed paragraph (f) requires that public facilities constructed with grant funds should use fuel other than petroleum or natural gas to the extent technologically and economically feasible. This requirement is included in these rules because of Executive Order 12185, which is applicable to all Federal funds. Proposed paragraph (g) requires you not to commit or spend more funds than we have awarded. It provides that our award of a grant does not obligate us to award continuation grants or grant amendments providing more funds to cover cost overruns. This does not affect our annual mandatory distributions to you under section 411(h) of SMCRA.

How can my grant be amended? (§ 885.17)

This proposed section describes the procedures to amend an existing grant. In paragraph (a), we define an amendment as a change to the terms or conditions of your grant agreement. We note that either you or we may initiate an amendment action. Paragraph (b) requires either you or us to inform the other in writing as soon as practicable when an amendment becomes necessary. Paragraph (c) requires that all requirements and procedures for grant amendments follow the ''Grants Common Rule.'' Among other matters, the Grants Common Rule includes provisions about what types of changes do and do not require our approval. Proposed paragraph (d) requires us to award your amendment within 20 days of receiving your request. This timeline is reduced from 30 days in Part 886.

What audit, accounting, and administrative requirements must I meet? (§ 885.18)

This proposed section requires you and us to follow standard procedures from OMB for grants management actions. We propose to adopt these procedures as they stand without adding any additional agency or program requirements. Paragraph (a) requires you to comply with OMB's audit requirements. Paragraph (b) requires you to follow the procedures in the ''Grants Common Rule'' for accounting, advance or reimbursement cash payments, records, and property.

What happens to unused funds from my grant? (§ 885.19)

This proposed section describes how we will handle any funds awarded in grants but not expended. Unused funds must be taken out of the completed grant when we close it out. At your request, we will either award the funds in a new grant or in a grant amendment to increase funding in an existing grant. Because section 402(i)(4) of SMCRA provides that Treasury funds for payments under sections 411(h)(1) and

(2) will remain available until expended, any distributed funds that you do not request or expend in an award will be reserved for use only by your State or Indian tribe until you do expend them. 30 U.S.C. 1232(i)(4).

What must I report? (§ 885.20)

This proposed section describes the information you must report to us about your grant. This proposal attempts to reduce reporting requirements to the minimum information we need in order to report the accomplishments and expenditures of the national Title IV program. We encourage you to comment with any suggestions for streamlining these procedures.

Paragraph (a) mandates that you annually report to us about each of your grants. You must report performance information, telling us what your program has accomplished, and financial information, telling us what grant funds your program has spent. Proposed paragraph (b) requires you to report performance and financial information to us at the end of each grant so that we can close out the grant in our system. Proposed paragraph (c) requires you to maintain a current list in the AML inventory of any known AML problems. Paragraph (1) requires you, if you complete any mine reclamation projects, to report project accomplishments with grant funds in the AML inventory annually as required by section 403(c) of SMCRA. Paragraph (2) reflects the new requirement in section 403(c) that we must approve proposed amendments to the AML inventory made by States and Indian tribes. 30 U.S.C. 1233(c). The provision is included here because it is possible that certified States and Indian tribes will need to make amendments to the AML inventory. In this paragraph, we are proposing to define ''amendment'' to mean any new coal problem under section 403(a) or section 403(b) of SMCRA that is added to the system after December 20, 2006. We do not intend for this provision to require our approval to add noncoal problems, but if you conduct projects under Part 875 you must enter them in the AML inventory.

What happens if I do not comply with applicable Federal law or the terms of my grant? (§ 885.21)

This section proposes that if you fail to comply with your grant award or a Federal law or regulation, we will take appropriate action. The Grants Common Rule provides remedies for noncompliance including withholding cash payments, suspending or terminating the grant, and taking other legal actions. We must follow the procedures in the Grants Common Rule when we take any enforcement action.

When and how can my grant be terminated for convenience? (§ 885.22)

This section proposes to allow either you or us to terminate the grant for convenience if that should become appropriate. We must follow the procedures in the Grants Common Rule.

*Part 886—Reclamation Grants to Uncertified States and Indian Tribes*

This Part describes the procedures for you, the uncertified State or Indian tribe, and for us, OSM, to use in applying, awarding, managing, and closing grants authorized by SMCRA, as revised by the 2006 amendments. Existing Part 886 covered all reclamation grants, but because we are proposing a new Part 885 for grants to certified States and Indian tribes, we propose to limit this Part to grants to uncertified States and Indian tribes only. Throughout this Part, we changed section titles to a question format in order to make it easier to use.

What does this Part do? (§ 886.1)

In this section, we added ''uncertified'' to limit this Part to grants to uncertified States and Indian tribes. We updated the reference to ''OSM's Final Guidelines for Reclamation Programs and Projects'' from the 1980 version in the existing regulations to the current version published in 2001. 66 FR 31250. In addition, we reworded this section using plain English.

Authority (§ 886.3)

We propose to delete this section because it is unnecessary and duplicative. Information about grant amounts is provided in proposed § 886.13.

Definitions (§ 886.5)

We propose to add a new section to Part 886 defining the terms ''award,'' ''distribute,'' and ''reclamation plan or State reclamation plan.'' These definitions are identical to those in proposed § 872.5.

Information Collection (§ 886.10)

We propose to reword this paragraph using plain English and to use the current format approved by OMB. It describes OMB's approval of information collections under Part 886, our use of that information, and the estimated reporting burden associated with those collections. In the future, these information collections will apply to fewer States and Indian tribes because of the new Part 885. We expect to notify OMB of the change and to reflect both Parts in future clearance actions.

Who is eligible for a grant? (§ 886.11)

We added language to this paragraph to specify that this Part applies to grants to uncertified States and Indian tribes only. This Part will no longer apply to States and Indian tribes that have certified completion of coal reclamation under section 411(a) of SMCRA and will receive grants under the new Part 885.

What can I use grant funds for? (§ 886.12)

We propose to reword existing paragraph (a) using plain English. We also propose to move the existing provision about OMB cost principles from this paragraph to new paragraph (e). In proposed paragraph (b), we reworded the provision about our reclamation grants. We also propose to move the existing provision about fuels to be used in public facilities to proposed § 886.16(f), because it is more closely related to that section than to the main topic of this paragraph. We propose to add a new paragraph (c) to this section requiring you to use each type of funds according to the provisions in Part 872 of this chapter. The paragraph lists each type of funds that may be awarded in an AML grant to an uncertified State or Tribe and references the section number which governs its use. We propose to move existing paragraph (c) to paragraph (d), reword it using plain English, and correct a spelling error. Finally, we propose to add new paragraph (e) requiring you to use grant funds only for costs that are allowable according to OMB cost principles in Circular A–87. This expands the provision in existing paragraph (a) that costs for services and materials from other State, Federal and local agencies are governed by the cost principles. OMB cost principles must be used to determine the allowability of costs from all sources.

What are the maximum grant amounts? (§ 886.13)

We propose to move existing § 886.13 to proposed § 886.14 and to add this new section establishing and clarifying our current grant procedures. Proposed paragraph (a) allows you to apply for a grant of any or all available funds at any time. Paragraph (b) states how we determine the amount of funds available to your State or Tribe:

- The current annual AML distribution;
- Plus any funds distributed in previous years that were not awarded in a grant;

• Plus any funds distributed in previous years that were awarded but were subsequently deobligated from a grant; but

• Minus any funds already awarded to you this fiscal year.

Proposed paragraph (c) provides that current FY funds will not be available for award until after we complete the annual distribution, which will occur after we receive fee collections for coal produced in the final quarter of the previous fiscal year. This provision reflects the change from appropriated funding to mandatory distributions as established in the 2006 amendments.

Proposed paragraph (d) requires us to give you current information on the amounts and types of funds that are available for award. In the immediate future, we expect to meet this requirement by providing a report similar to our current share balance report to you whenever you request it, but the report and the process will likely change over time. If you have suggestions about how we can better meet your financial information needs, we encourage you to comment.

How long will my grant be? (§ 886.14)

We propose to delete existing § 886.14, ''Annual submission of budget information,'' which requires you to submit budget estimates and information for our use in preparing appropriation requests for reclamation grants. We no longer need estimates for appropriation requests. Instead we propose to recodify existing § 886.13 as § 886.14 and revise it to reflect the way we are currently organizing AML grants. Since 1993, we have used the ''simplified'' grants concept to combine all AML grant funding in a single annual grant. Each grant normally lasts for three years. Each grant has subaccounts for different functions such as administration costs, coal reclamation projects, water projects, and emergency administration and project costs. These subaccounts remain open for different periods of time. Administrative accounts normally stay open for one year, so that only one account is active at any one time. Project cost accounts normally last for three years to allow for planning, design, construction, and completion of reclamation projects.

Proposed § 886.14(a) is the existing § 886.13(b) reworded using plain English. Proposed § 886.14(b) establishes three years as the normal grant period. Proposed § 886.14(c) allows us to extend the grant period if you request it. We will normally extend a grant once for up to one additional year, following our established practice. We may allow more or longer extensions in special or unusual circumstances. Proposed § 886.14(d), which establishes one year as the normal period for administrative accounts, is the existing § 886.13(a) reworded using plain English.

We also propose to add § 886.14(e) to allow us to lengthen the time period for new or amended AML grants that contain State share or Tribal share funds distributed during FY 2008, 2009, and 2010 for up to five years at your request. We proposed this revision to comply with the new provision in section 402(g)(1)(D) of SMCRA that requires that State share and Tribal share funds that are not expended within 3 years after the date of any grant award (except for grants during FY 2008, 2009, and 2010 to the extent not expended within 5 years), will be transferred to historic coal share funds. 30 U.S.C. 1232(g)(1)(D).

An alternative approach to this provision would be to award all grants in FY 2008–2010 for five years. However, we expect that in many cases uncertified States and Indian tribes will be able to expend the State or Tribal share funds within the normal three year grant period. If we were to automatically award all grants to five years, the administrative burden on you and us to track, manage, and report on open grants would increase. We believe that our proposal to allow new awards or extension amendments for up to five years at your request when you need the additional time will eliminate an unnecessary burden in managing all the grants that can be completed sooner.

How do I apply for a grant? (§ 886.15)

In paragraph (a), we propose to remove a provision that a preapplication is not required under certain conditions. We do not require a preapplication for AML grants. In paragraph (b), we propose to remove the requirement that we must prepare and sign the grant agreement because this provision was duplicated in § 886.16, which is a more appropriate location. We reworded this entire section using plain English.

After OSM approves my grant, what responsibilities do I have? (§ 886.16)

We revised this entire section to reflect the electronic processing of our grant awards, to remove references to signatures and other paper-based procedures, and to use plain English. In addition, we added language to paragraph (e) to reflect the 2006 amendments' changes to the AML inventory under section 403(c) of SMCRA. We describe specific changes to the content of this regulation below.

To begin, we propose revising paragraph (a) to remove the requirements that a grant agreement include a statement of the work to be covered and a statement of required approvals and conditions. We removed these requirements because our electronic grant system does not display such information clearly and effectively in agreement documents. All required information is normally included in your application and reclamation plan, as well as our regulations and directives.

Next, we propose to revise paragraph (c) in order to remove the requirement that you countersign the grant agreement within 20 days to accept the award or we will deobligate the grant amount. Instead, we propose that you accept the agreement when you initiate work under the grant or first draw down any funds. We made this change when we implemented our electronic grant system to eliminate unnecessary processing.

We propose to revise paragraph (d) to clarify our existing ATP process. Although funds are obligated when the grant is awarded, you must not expend construction funds on an individual project until you and we have ensured that we are in compliance with NEPA and all other applicable laws and requirements. We send you a written ATP to confirm that we have completed the compliance actions and that you may expend funds on construction of that project.

We propose revising paragraph (e) to reflect section 403(c) of SMCRA that now requires proposed amendments to the AML inventory that are made by States and Indian tribes to be approved by OSM, acting for the Secretary. 30 U.S.C. 1233(c). In this paragraph, we are proposing to define ''amendment'' to mean any new coal problem under section 403(a) or section 403(b) of SMCRA that is added to the system after December 20, 2006. In addition, we are proposing that the term ''amendment'' would also include instances where you, the State or Indian tribe, elevate a Priority 3 coal problem contained in the AML inventory to either Priority 1 or Priority 2 status. We are proposing these changes to be consistent with section 403(c) of SMCRA, and also section 402(g)(2), which requires us to ensure strict compliance by uncertified States and Indian tribes with the priorities described in section 403(a) of SMCRA. Problems will normally be approved and entered in the AML inventory when identified, before you begin development, design and construction activities, but our approval may occur during the ATP process if the problem

has not previously been approved. Non-emergency problems must be approved and entered in the AML inventory before we approve the ATP.

We do not intend for this provision to require our approval for a 30% AMD set-aside, or noncoal work conducted by uncertified States under section 409 of SMCRA, or for salaries or administrative costs of the AML program. With the exception of those instances where Priority 3 inventory problems are being elevated to a Priority 1 or Priority 2, we also do not intend for this provision to require our approval for subsequent revisions to coal problems once they have been included in the AML inventory. This provision does not change existing procedures where States and Indian tribes routinely update the AML inventory at the time projects are funded or completed.

Under § 886.16(e)(1), we are proposing that our approval of an emergency project under section 410 of SMCRA, which is our ATP for the emergency project, also constitutes our approval to place the coal problems being addressed by the emergency into the AML inventory. We are proposing this process for emergency projects because the declaration of an emergency by us confirms that the problem is a danger to the public health, safety, or general welfare under section 410(a)(1) of SMCRA.

In paragraph (e)(2), we propose to add the approval requirement in section 403(c) so that you cannot use funds for project development, design, or construction of new coal reclamation projects before we have approved the problems for inclusion in the AML inventory. This paragraph would apply only to coal reclamation problems added to the AML inventory after December 20, 2006. We believe this proposal helps fulfill our responsibility under section 402(g)(2) to ensure strict compliance by uncertified States and Indian tribes with the priorities described in section 403(a) of SMCRA. 30 U.S.C. 1232(g)(2). Requiring AML coal problems to be in the AML inventory prior to the development of designs will promote coordination between us and uncertified States and Indian tribes early in the planning process. This early coordination will help eliminate the potential for agency conflict after property owners have been promised reclamation and substantial design funding has been spent. Finally, requiring AML coal problems to be in the AML inventory before the development of designs would spread out our review workload and potentially expedite later project ATP reviews because field staff would already be familiar with the proposed project area.

The provision in paragraph (f) was moved here from the last sentence of existing regulation § 886.12(b) because we believe it is more appropriate in this section as a separate paragraph. The requirement that public facilities constructed with grant funds should use fuel other than petroleum or natural gas to the extent technologically and economically feasible is from Executive Order 12185 and applies to all Federal funds.

In proposed paragraph (g), we added an introductory sentence advising you that you must not expend more funds than we have awarded. The remainder of the paragraph is existing § 886.16(f), which provides that we are not committed to award additional funds for cost overruns.

How can my grant be amended? (§ 886.17)

We propose to move the requirement that grant amendment procedures must follow the Grants Common Rule from the last sentence of existing paragraph (a) to new paragraph (c). In paragraph (b), we deleted the second sentence, with specific conditions which require an advance amendment, because we believe it is unnecessary. The Grants Common Rule provides sufficient information on amendment requirements, and we will address how these requirements apply to many specific types of grant changes in our directives. We renumbered existing paragraph (c) to (d). We also reworded this section using plain English.

What audit and administrative requirements must I meet? (§ 886.18)

We propose to move and divide existing § 886.18 into proposed §§ 886.20, 886.23, 886.24, 886.25, and 886.26. Proposed § 886.18 is a combination of two short existing sections, §§ 886.19 and 886.20. Proposed paragraph (a) contains the audit requirement from existing § 886.19, which we updated by deleting the reference to the General Accounting Office and adding OMB Circular A–133. Paragraph (b) is from the existing § 886.20 on administrative procedures. We deleted the existing requirement that you use our property inventory form because the form is now optional. In addition, this section now refers to the Grants Common Rule, which provides sufficient information on property management requirements. Specific requirements and forms will be addressed in our directives. We reworded this section using plain English.

How must I account for grant funds? (§ 886.19)

As explained above, we moved existing § 886.19 to proposed 886.18(a). We moved the content of existing § 886.22, ''Financial management,'' to this proposed section in order to group the management sections together. We also reworded it using plain English.

What happens to unused funds from my grant? (§ 886.20)

We propose to move existing § 886.20 to proposed § 886.18(b) and add a new section here to clarify how we will treat unused grant funds. However, portions of this section are based on existing § 886.18(a)(2) and on the fourth and fifth sentences of existing §§ 872.11(b)(1) and (b)(2). Grant funds may be left unexpended at the end of a grant due to changes during the grant period such as increases or decreases in project scope or reclamation costs. Changes may also occur after the end of a grant period that reduce the total funds expended under the grant, such as the receipt of funds from the sale of property. We also consider unawarded funds, moneys which have been distributed to a State or Indian tribe but not awarded in a grant, as unused funds.

Proposed paragraph (a) explains that we will deobligate all unexpended funds from a completed grant agreement in order to close it out and describes how we will treat unexpended funds. Paragraph (a)(1) is based on existing § 886.18(a)(2), which allows us to reduce your grant if you fail to obligate funds within three years of the grant award. We propose to modify this provision to address section 402(g)(1)(D) of SMCRA, as revised in the 2006 amendments, which mandates that State and Tribal share funds that are not spent within 3 years, or 5 years for funds distributed in FY 2008, 2009, or 2010, must be made available for expenditure as historic coal funds. 30 U.S.C. 1232(g)(1)(D). Our proposed paragraph (1) of this section requires us to transfer any State share funds or Tribal share funds that uncertified States and Indian tribes do not expend within 3 years, or 5 years for FY 2008, 2009, or 2010 funds, from that State or Indian tribe to historic coal funds. We will distribute transferred funds to uncertified States and Indian tribes at the next annual distribution using the prescribed historic coal formula described in proposed § 872.22. In proposed paragraph (a)(2), we propose to hold any unused Federal expense funds, such as State emergency program funds, for distribution to any State or Indian tribe which needs them for the specific

activity for which Congress appropriated the funds. Finally, paragraph (3) specifies that unused funds of all other types will be made available for inclusion in a grant to the State or Indian tribe for which we originally distributed the funds.

Paragraph (b) provides that we will transfer any State or Tribal share funds that have not been awarded in a grant within three years of the date we distributed them to you, or five years for funds distributed in FY 2008, 2009, or 2010, to historic coal funds in the same way that we transfer unused funds under paragraph (a)(1). We are proposing to add this paragraph because we believe that funds that have not been requested and approved for award within 3 or 5 years of the distribution date are unneeded and should be transferred to other States and Indian tribes that can use them more efficiently. We are interested in your comments on this proposal.

What must I report? (§ 886.21)

We propose to delete existing § 886.21 because this topic is addressed in § 886.12. This proposed section was moved from § 886.23 to improve readability. The existing paragraph (a) in § 886.23 required you to submit to us every year the reporting forms that we specified. We are proposing to replace this paragraph with a requirement that each year you report to us the program performance and financial information that we specify. We propose not to establish a uniform method for you to submit this information because allowing you to use various forms, formats, and methods to submit your annual reports will make it less of a burden on you.

The existing paragraph (b) combines two different reporting requirements by requiring you to submit an OSM–76 inventory form upon project completion and any other closeout reports we specify. We propose to clarify this requirement by separating the AML inventory and grant closeout requirements. Proposed paragraph (b) covers the reports you must provide us upon completion of each grant. These are final performance and financial reports, as well as property and any other reports that we specify. Proposed paragraph (c) requires you to update the AML inventory upon completing each reclamation project. Removing this item from the grant closeout requirements clarifies that you must update the AML inventory as you complete each project rather than waiting until the grant is completed.

What records must I maintain? (§ 886.22)

As proposed, existing § 886.22 was moved to § 886.19. This proposed section was moved from existing § 886.24 and reworded using plain English. To clarify that this section covers all records, programmatic as well as accounting, we added a sentence noting that your records must support all the information you reported to us for your grant.

What actions can OSM take if I do not comply with the terms of my grant? (§ 886.23)

We propose to move existing § 886.23 to proposed § 886.21 and to divide the existing § 886.18, ''Grant reduction, suspension and termination,'' into five sections for clarification. One section was already described in proposed § 886.20. This is the first of four additional proposed new sections, which will be followed by §§ 886.24, 886.25, and 886.26.

Proposed paragraph (a) of this section begins with the existing paragraph § 886.18(b), which lists various actions we may choose to take for noncompliance, ranging from temporarily withholding cash payments to terminating your grant. We deleted the existing paragraph § 886.18(a)(1), which duplicated some of these provisions.

Proposed § 886.23(b) is based on existing paragraph (a)(3) and requires us to terminate your reclamation grant if we terminate your regulatory administration and enforcement grant. We propose to modify this to state the exceptions to this requirement provided in SMCRA for the States of Missouri and Tennessee in section 402(g)(8)(B), and for the Navajo, Hopi, and Crow Indian tribes in section 405(k). In addition, we reworded this entire section using plain English.

Proposed § 886.23(c) is moved from existing § 886.18(a)(5). Likewise, proposed § 886.23(d) is moved from existing paragraph (a)(6). This proposed paragraph is modified to require us to take appropriate remedial action for overdue reports up to terminating the grant, rather than providing no option but termination. Proposed § 886.23(e) was moved from existing § 886.18(a)(7). Similarly, proposed § 886.23(f) was moved from existing § 886.18(a)(4). These paragraphs were reworded using plain English.

What procedures will OSM follow to reduce, suspend, or terminate my grant? (§ 886.24)

We propose to move existing § 886.24 to § 886.22. This proposed § 886.24 is another section we have separated from existing § 886.18. This section was taken from the existing § 886.18(c)(1) through (c)(6) and reworded using plain English. Existing § 886.18(c)(7) was taken out of this section and moved to proposed new § 886.26 because termination for convenience does not require the procedures for adverse actions provided in this section.

How can I appeal a decision to reduce, suspend, or terminate my grant? (§ 886.25)

Under our proposal, existing § 886.25 was reworded and renumbered as § 886.27. This section, split from existing § 886.18, was taken from paragraph (d) of that section. In addition, the final appeal authority was changed from the Secretary to the Department of the Interior's Office of Hearings and Appeals. The section was reworded using plain English.

When and how can my grant be terminated for convenience? (§ 886.26)

This proposed new paragraph was separated from the existing § 886.18(c)(7) to distinguish it from the unilateral reduction, suspension, or termination procedures in that section. A termination for convenience is a joint decision and procedures are much simpler.

What special procedures apply to Indian lands not subject to an approved Tribal reclamation program? (§ 886.27)

This proposed new section was renumbered from § 886.25. The reference in paragraph (d) to a particular type of funding in Part 872 was also updated.

*Part 887—Subsidence Insurance Program Grants*

Throughout this Part, we added references to Indian tribes to clarify that Indian tribes may choose to establish a subsidence insurance program under the same rules as States.

Scope (§ 887.1)

We added references to Indian tribes wherever the existing rule says States.

Authority (§ 887.3)

We propose to delete this section because it is unnecessary and duplicative.

Definitions (§ 887.5)

We propose to expand the term ''State administered'' defined in this section to ''State or Indian tribe administered.'' We also propose to reword two definitions (''Self-sustaining'' and ''State or Indian tribe administered'') to add other

references to Indian tribes and to use plain English. We also propose to include the definition of the term ''reclamation plan or State reclamation plan'' as it is defined in proposed § 872.5.

Information Collection (§ 887.10)

We propose rewording this paragraph to add references to Indian tribes, to use plain English, and to use the current format approved by the OMB. This paragraph describes OMB's approval of information collections in Part 887, our use of that information, and the estimated reporting burden associated with those collections.

Eligibility for Grants (§ 887.11)

The existing section allows only State or Tribal share funds to be used for subsidence insurance programs. We propose adding language to allow certified States and Indian tribes to fund this program with prior balance replacement funds if their State legislature or Tribal council establishes that use, or with certified in lieu funds.

Coverage and Amount of Grants (§ 887.12)

We are proposing to revise paragraph (b) to add a reference to the proposed new Part 885 for grants to certified States and Indian tribes. We are proposing to revise paragraph (c) to clarify that the funding limit of $3 million is cumulative over the lifetime of the program. In addition, we also reworded this section using plain English.

Grant Period (§ 887.13)

Grant Administration Requirements and Procedures (§ 887.15)

We reworded these sections using plain English and updated § 887.15 to include proposed Part 885.

## IV. Public Comment Procedures

*Written Comments:* If you submit written comments, they should be specific, confined to issues pertinent to the proposed rule, and explain the reason for any recommended changes. We appreciate all comments, but those most useful and likely to influence decisions on any revisions will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, the 2006 amendments, case law, or other pertinent State or Federal laws or regulations.

We cannot ensure that comments received after the close of the comment period (see **DATES**) will be included in the docket for the rulemaking and considered. Comments sent to an address other than those listed above (see **ADDRESSES**) will not be included in the docket for the rulemaking.

*Public Availability of Comments:* Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Public hearings:* We will only hold a public hearing on the proposed rule upon request. The time, date, and address for any hearing will be announced in the **Federal Register** at least 7 days prior to the hearing.

Any person interested in participating in a hearing should inform Mr. Lytton (see **FOR FURTHER INFORMATION CONTACT**), either orally or in writing by 5 p.m., Eastern Time, on July 11, 2008. If no one has contacted Mr. Lytton to express an interest in participating in a hearing by that date, a hearing will not be held. If there is only limited interest, a public meeting or teleconference rather than a hearing may be held, with the results included in the docket for this rulemaking.

The public hearing on the specified date will continue until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard. To assist the transcriber and ensure an accurate record, we request, if possible, that each person who testifies at a public hearing provide us with a written copy of his or her testimony.

*Public meeting:* If there is only limited interest in a hearing at a particular location, a public meeting or teleconference, rather than a public hearing, may be held. People wishing to meet with us to discuss the proposed rule may request a meeting by contacting Mr. Lytton (See **FOR FURTHER INFORMATION CONTACT**). All meetings will be open to the public and, if possible, notice of the meetings will be posted at the appropriate locations listed under **ADDRESSES**. A written summary of each public meeting or teleconference will be made a part of the docket for this rulemaking.

## V. Procedural Determinations

*Executive Order 12866—Regulatory Planning and Review*

This proposed rule is considered an ''economically significant regulatory action'' under the criteria of section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget. Based on the criteria for an ''economically significant regulatory action'' found in section 3(f), we have made a preliminary determination that:

a. The rule may raise novel legal or policy issues arising from legal mandates, the President's priorities, or the principles set forth in the Executive Order.

b. The rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. The rule would not materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. However, as discussed below, grants to States and Indian tribes have increased, as required by the provisions of the 2006 amendments.

d. The rule would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. The rule would align our regulations with statutory provisions contained in the 2006 amendments pertaining to the collection of reclamation fees and the distribution of money from the Fund and Treasury in the form of mandatory grants to States and Indian tribes. The provisions of the 2006 amendments have an annual effect on the economy of $100 million or more. Coal operators subject to the extension of the fee and the new rates received actual notice before they became effective. These new fees have already been collected for the two quarters beginning October 1, 2007 and ending March 31, 2008. In addition, we have already distributed approximately $274 million in FY 2008 mandatory grants to the States and Indian tribes.

*Assessment of Potential Costs and Benefits*

Executive Order 12866 requires OSM to conduct an assessment of the potential costs and benefits of any regulatory action deemed significant under Executive Order 12866. OMB Circular A–4 provides guidance to Federal agencies on the development of a regulatory analysis. It requires us to identify a baseline because benefits and costs are defined in comparison with a clearly stated alternative. OMB has

stated that ''this normally will be a 'no action' baseline: what the world will be like if the proposed rule is not adopted.'' OMB Circular A–4, Regulatory Analysis (Sept. 17, 2003). As previously stated, the new fee rates have gone into effect and are being paid and the grant distributions mandated by the 2006 amendments have been made for FY 2008. These statutory changes are already in effect regardless of whether this proposed rule is finalized. For comparison purposes, OSM will use as the ''no action baseline'' the fee rates paid by operators and grant distribution requirements for States and Indian tribes that would have been in effect if the 2006 amendments had not been signed into law. We will refer to this as the ''old law'' or the ''no action alternative.'' The second alternative we will analyze consists of the requirements pertaining to fee collections and grant distributions to States and Indian tribes established by the 2006 amendments. We will refer to this as the 2006 amendments alternative.

The basic difference between the two alternatives is the cost to the coal operators and the Treasury and the resulting benefits quantified in terms of the acres of environmental problems that can be reclaimed. Under the old law, the fee rates that would have been in effect on October 1, 2007, would have been the rates established using the formula specified in our existing regulations at 30 CFR 870.13(b). Those fee rates would be paid for approximately 13–14 years. They would be established before the start of each fiscal year and would be based on estimates of coal production and the amount of the interest transferred to the CBF for that year. The fees for each year would have been structured to replace the amount of money transferred to the CBF at the beginning of the year (generally the amount of interest that the Fund earns that year, subject to a $70 million cap, with corrections for adjustments to previous transfers and differences between estimated and actual coal production in prior years). The purpose of the fee was to reimburse the Fund for the interest transferred to the CBF. Under the old law alternative, the money in the Fund would have been exhausted in approximately 13–14 years—after which time, no more money would have been available for reclamation projects and no interest would have been transferred to the CBF.

Under the old law, grants would have been made based on the amount of money appropriated each year by Congress. Uncertified States and Indian tribes would be required to use the money for AML reclamation projects. Certified States and Indian tribes would be required to use the money for noncoal reclamation as specified in existing § 875.15. Pursuant to existing § 875.15, certified States and Indian tribes could use any money that they received for reclamation projects involving the restoration of lands and water adversely affected by past mineral mining, projects involving the protection, repair, replacement, construction, or enhancement of utilities (such as those relating to water supply, roads, and other such facilities serving the public adversely affected by mineral mining and processing practices), and the construction of public facilities in communities impacted by coal or other mineral mining and processing practices.

As explained in the preamble, the 2006 amendments both extended the reclamation fee for 14 years and provided for a two-step reduction in the amount of the fee rate from the rate originally established in 1977. The statutory fee rates were reduced by 10 percent from the levels established in 1977, for the period from October 1, 2007, through September 30, 2012. The fee rates will again be reduced by another 10 percent from the levels established in 1977 for the period from October 1, 2012, through September 30, 2021. The fee rates under 2006 amendments are specified in the proposed rule at § 870.13. The fee rates for 2007–2012 will range from 31.5 cents per ton down to 9 cents per ton.

While the rates established by the 2006 amendments are lower than the 1977 rates, they are higher than the rates that would have been established under existing § 870.13(b), which would have gone into effect had the 2006 amendments not been enacted into law. Fee rates under existing § 870.13(b) for years 2007–2012 were estimated to range as follow:

| Fiscal year | Fees for non-lignite coal produced by surface methods (cents per short ton) | Fees for non-lignite coal produced by underground methods (cents per short ton) | Fees for lignite coal (cents per short ton) |
|---|---|---|---|
| 2007 | 8.5 | 3.7 | 2.4 |
| 2008 | 8.5 | 3.6 | 2.4 |
| 2009 | 7.8 | 3.4 | 2.2 |
| 2010 | 7.3 | 3.1 | 2.1 |
| 2011 | 2.6 | 1.1 | 0.7 |
| 2012 | 2.0 | 0.9 | 0.6 |

In addition to the fee rate extension, the 2006 amendments also require that:

1. Once fully phased in, the majority of the distributions to States and Indian tribes of moneys annually collected from the reclamation fee will be made outside of the appropriations process. 30 U.S.C. 1231(d).

2. All States and Indian tribes with approved reclamation programs will be paid amounts equal to their portion of the unappropriated prior balance of State and Tribal share funds as of September 30, 2007. 30 U.S.C. 1240a(h)(1)(A). These payments are mandatory distributions from Treasury funds and will be made in seven equal annual installments that began in FY 2008. 30 U.S.C. 1232(i)(2) and 1240a(h)(1)(C). Uncertified States and Indian tribes must use these prior balance replacement funds for the purposes of section 403 of SMCRA. 30 U.S.C. 1240a(h)(1)(D)(ii). Certified States and Indian tribes must use these payments for purposes established by their State legislature or Tribal council, ''with priority given for addressing the impacts of mineral development.'' 30 U.S.C. 1240a(h)(1)(D)(i).

3. Subject to certain limitations, to the extent premium payments and other revenue sources do not meet the financial needs of the UMWA health care plans, all unappropriated past

interest earnings and all future interest earned by the Fund must be transferred to these plans, together with any remaining unappropriated balance in the RAMP allocation, which the 2006 amendments repealed. 30 U.S.C. 1232(h). In addition, the three UMWA health care plans are eligible to receive Treasury transfers to cover any remaining deficit, subject to certain limitations. 30 U.S.C. 1232(i).

In general, under the old law and the 2006 amendments, the type of coal reclamation problems that would be remediated, mainly by the uncertified States and Indian tribes, would be the most serious AML problems (Priority 1 and Priority 2 also referred to as ''high priority'' problems). High priority AML problems include:

- Clogged Streams;
- Clogged Stream Lands;
- Dangerous Piles or Embankments;
- Dangerous Highwalls;
- Dangerous Impoundments;
- Dangerous Slides;
- Hazardous or Explosive Gases;
- Hazardous Equipment or Facilities;
- Hazardous Recreational Water Bodies;
- Industrial or Residential Waste;
- Portals;
- Polluted Water: Agricultural/Industrial;
- Polluted Water: Human Consumption;
- Subsidence-Prone Areas;
- Surface Burning;
- Underground Mine Fires; and
- Vertical Openings.

Under the old law, certified States and Indian tribes were required to use grant money for noncoal reclamation. Under the 2006 amendments, certified States and Indian tribes must use prior balance replacement funds for purposes established by the State legislature or Tribal council, with priority given for addressing the impacts of mineral development. Exactly what these purposes will be is undetermined at this time.

In the proposed rule, certified States and Indian tribes are allowed to use certified in lieu funds for any purpose they deem appropriate. In the preamble discussion for proposed § 872.34, we are seeking comment on an alternative which would require certified States and Indian tribes to use the money for noncoal reclamation. Under this alternative, we assume that the same types of activity would continue as are required by our existing regulations. Noncoal reclamation activities have included reclamation activities at abandoned mines affected by hard rock mining operations and sand and gravel operations. Also, in communities impacted by coal or other mineral mining, funds have been used for the construction of public facilities such as schools, hospitals, and water treatment plants. Under either alternative, we assume that States and Indian tribes will use the money for the public good but the wide discretion given to the States and Indian tribes makes any meaningful discussion of the effects too speculative.

*Summary of Costs and Benefits*

The following two tables summarize the costs and benefits under the no action alternative and the 2006 amendments alternative.

Table 1 indicates the estimated costs associated with each alternative. Under the no action alternative, the cost to operators is approximately $612 million. This sum consists of the fees that operators would pay under our current regulations at § 870.13(b). Under the 2006 amendments alternative, the estimated cost is approximately $6.9 billion. This sum consists of: (1) The fees operators will pay under the rates established by the 2006 amendments; (2) money from the general fund of the Treasury that we are required to transfer to certified and uncertified States and Indian tribes for their share of the prior unappropriated balance; and (3) Treasury funds that will be transferred to certified States and Tribes as in lieu funds equal to 50% of fees collected on coal produced in their State or on Tribal lands. This sum does not include money that we will pay to the UMWA under the 2006 amendments because those payments are not addressed in this proposed rule. .

TABLE 1.—ESTIMATED COSTS ASSOCIATED WITH THE ALTERNATIVES FROM OCTOBER 1, 2007–SEPTEMBER 30, 2021

| Alternatives | Estimated costs to operators for fees paid under the old law from October 1, 2007 thru September 30, 2021 (the 1977 fee rates at § 870.13(a) terminate on September 30, 2007; new fee rates at § 870.13(b) sufficient to replenish interest transferred to CBF take effect) | Estimated costs to operators for fees paid under the 2006 amendments from October 1, 2007 thru September 30, 2021 | Estimated costs to the Federal Treasury (for prior balance replacement funds and certified in lieu funds) | Estimated total costs |
|---|---|---|---|---|
| | A | B | C | D |
| 1. No Action or Old Law | $612 million | | | $612 million. |
| 2. 2006 Amendments | | $4.1 billion | $2.8 billion | $6.9 billion. |

Table 2 indicates the estimated benefits expressed in acres of land reclaimed. Column A indicates the estimated total amount of money available for reclamation under each alternative. Column B indicates acres of high priority sites that need to be reclaimed under each alternative. Column C indicates the estimated acres of high priority sites that can be reclaimed with the funds available under each alternative. In Column D, D1 indicates the estimated acres of high priority coal sites that would not be reclaimed under the no action alternative because of insufficient funds. D2 indicates the estimated additional reclamation that could be achieved under the 2006 amendments. For uncertified States and Indian tribes, the additional reclamation would be at Priority 1 and 2 sites, Priority 3 sites, and noncoal reclamation. For certified States and Indian tribes, the reclamation could be at newly discovered Priority 1, 2, and 3 coal sites, and noncoal reclamation. However, as previously discussed, under the 2006 amendments, certified States and Indian tribes may use prior balance replacement funds for purposes established by the State legislature or Tribal council, with priority given for addressing the impacts of mineral development; we are proposing in the rule that they may use certified in lieu funds for any purpose.

Therefore, the $1.981 billion dollars that will come from Treasury funds may be used for coal and noncoal reclamation but it also may be used for other undetermined purposes. We assume that certified States and Indian tribes will use the money for the public good, as they have in the past, but the wide discretion given to the States and Indian tribes make any meaningful discussion of the actual benefits speculative.

TABLE 2.—ESTIMATED BENEFITS EXPRESSED IN ACRES OF LAND RECLAIMED

| Alternatives | Amount of money estimated to be available for reclamation ($ rounded in millions) | P1 and P2 sites acres identified with high priority environmental problems that need reclamation | Estimated number of acres of identified problems reclaimed with available funds | Estimated number of acres of land unreclaimed (D1) or additional reclamation possible after P1 and P2 sites completed (D2) |
|---|---|---|---|---|
| | A | B | C | D |
| 1. No Action or Old Law; 1977 Fee Rates (§ 870.13(a)) terminate on September 30, 2007; new fee rates (§ 870.13(b)) sufficient to replenish interest transferred to CBF take effect. | $2,110.4 (Source: collections prior to September 30, 2007 plus interest earned on prior collections). | 210,379 | 157,937 | (52,442). |
| 2. 2006 Amendments | $6,027.6 | 210,379 | 210,379 | 210,257. |
| Uncertified States and Indian tribes | $4,045.7 (Source: prior balance replacement funds, 50% State share, 30% historic coal share and 3% estimated minimum program share). | 208,131 | 208,131 | 60,284. |
| Certified States and Indian tribes | $1,981.9 (Source: prior balance replacement funds and certified in lieu funds). | 2,248 | 2,248 | 149,973 (under 2006 amendments, funds are not committed to reclamation). |

**Note:** For activity beyond FY 2023, an additional estimated amount available for reclamation of $1.6 billion is projected to be used to reclaim an additional 106,000 acres.

As can be seen from the above tables, under the no action alternative the cost to industry would be approximately $612 million, but there would be approximately 52,442 acres of Priority 1 and Priority 2 coal sites left unreclaimed. Under the 2006 amendments alternative, the cost to industry would be substantially greater, approximately $4.1 billion, but that amount in combination with the $2.8 billion in Treasury funds would be sufficient to reclaim all Priority 1 and Priority 2 sites. In addition, there would be additional funds remaining which could be used for reclamation at Priority 3 sites, for noncoal reclamation projects, construction of public facilities, and for other purposes deemed appropriate by the State or Indian tribe.

In addition to the quantifiable benefits expressed in acres reclaimed, unquantifiable benefits also result. These include:

- Reduction or elimination in health and safety problems, which would benefit nearby residents;
- Reduction or elimination of adverse environmental effects such as acid mine drainage and erosion and sedimentation;
- Improved habitat for fish and wildlife;
- Increased employment opportunities for those employed by the reclamation projects;
- An increase in the number of potential land uses at these sites and a reduction or elimination of hazardous features that are often attractive but dangerous to outdoor recreationists; and
- General increase in the quality of life in nearby communities and adjacent property values.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires that a Federal agency, when developing proposed and final regulations, consider the impact of its regulations on small entities. If a proposed rule is expected to have a significant economic impact on a substantial number of small entities, the agency must prepare an initial regulatory flexibility analysis. If a proposed rule is not expected to have a significant economic impact on a substantial number of small entities the agency is not required to perform an initial regulatory flexibility analysis and may certify in the rule that the rule would not have a significant economic impact on a substantial number of small entities under the RFA.

The Small Business Administration size standards for small businesses in the coal mining industry are established by the North American Industry Classification System Codes (NAICS). NAICS classifies the ''coal mining ''industry under Code 2121; subsets of this sector include ''Bituminous Coal and Lignite Surface Mining'' code 212111; ''Bituminous Coal Underground Mining'' code 212112; and ''Anthracite Mining'' code 212113. The size standards established for each of these categories is 500 employees or less for each business concern and associated affiliates. Data available from the U.S. Census Bureau and from the Mine Safety and Health Administration indicates that over 90 percent of those engaged in coal mining operations are considered small entities.

As previously stated, it is the 2006 amendments which require coal operators to pay reclamation fees. Those subject to the fees received individual letters informing them of the fee and the extension of time during which the fee must be paid. Approximately $135 million has already been collected. The proposed rule merely reflects the extension of our statutory authority to collect reclamation fees for an additional fourteen years. Based on these facts, the Department of the Interior certifies that the proposed rule would not have a significant economic

impact on a substantial number of small entities under the RFA.

The administrative and procedural provisions in the rule are not expected to have an adverse economic impact on the regulated industry including small entities. The increased grant funding to States and Indian tribes required by the 2006 amendments is expected to provide increased contracting opportunities for firms, including small entities, to do reclamation-related work. Further, the proposed rule is not expected to produce adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

*Small Business Regulatory Enforcement Fairness Act*

OSM does not consider the proposed rule to be a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act for the following reasons.

a. The provisions of the 2006 amendments pertaining to the new fee rates and grant requirements are self-implementing. Coal operators subject to the new rates received actual notice of the rates and of the extension of the time during which they must be paid. They have already begun to pay the fee at the new rate, and for the two quarters beginning October 1, 2007 and ending March 31, 2008, we already collected approximately $135 million in reclamation fees. In addition, we have already distributed approximately $274 million in FY 2008 mandatory grants to the States and Indian tribes. The proposed rule merely aligns our regulations with the self-implementing provisions of the 2006 amendments.

b. The proposed rule would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. The proposed rule would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises for the reasons stated above.

*Unfunded Mandates*

This proposed rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, Tribal, or local governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

*Executive Order 12630—Takings*

In accordance with Executive Order 12630, the proposed rule does not have significant takings implications. The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. A takings implication assessment is not required.

*Executive Order 12988—Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

*Executive Order 13132—Federalism*

We have reviewed the proposed rule under the criteria specified in Executive Order 13132 and have determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The proposed rule does not preempt State law, it does not impose substantial direct compliance costs on State and local governments, it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

As required by section 6 of the executive order, we consulted with representatives of States and Indian tribes early in the process of developing the proposed rule. In January, February, and May 2007, we met with representatives of States and Indian tribes with approved reclamation programs at meetings hosted by the Interstate Mining Compact Commission (IMCC) and the National Association of Abandoned Mine Land Programs (NAAMLP) to notify the States and Indian tribes of the 2006 amendments' changes to SMCRA and to seek their input on the amendments. The IMCC and NAAMLP subsequently submitted joint written comments on specific provisions of the amendments. We considered all the comments we received in developing the proposed rule. The consultations and concerns that were expressed are discussed above in ''II. Outreach, Guidance, and Comments.'' Based on input the Department received after issuance of the Solicitor's Memorandum Opinion, one or more States may object to several provisions in these proposed rules, but we believe that the 2006 amendments and other applicable statutes mandate adoption of these particular provisions. We do not have the option of adopting any other interpretation.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 requires that Federal agencies consult with potentially affected Indian Tribal governments before taking any actions (including promulgation of regulations) that may have a substantial direct effect on one of more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. In addition, section 5 of that order requires the agency to prepare a Tribal summary impact statement for regulations that impose compliance costs on Tribal governments or that preempt Tribal law. The summary statement must be included in the preamble to the final rule.

We have determined that this proposed rule will have some effect on the three Indian tribes with AML programs, with changes in annual funding and increased discretion over the use of funds, but that this effect is not substantial. The rule does not impose compliance costs on Tribal governments or preempt Tribal law. Indian Tribal representatives were invited to informal meetings in January, February, and May of 2007, in which OSM met with State and Indian Tribal reclamation programs to get input on the 2006 amendments.

*Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This proposed rule is not considered a significant energy action under Executive Order 13211. The proposed revisions would not have a significant effect on the supply, distribution, or use of energy.

*Paperwork Reduction Act*

In accordance with 44 U.S.C. 3507(d), OSM has submitted the following request for information collection and recordkeeping authority for 30 CFR 785 to the Office of Management and Budget (OMB) for review and approval:

*Title:* 30 CFR 785—Requirements for permits for special categories of mining.

*OMB Control Number:* 1029–0040.

*Summary:* The information is being collected to meet the requirements of sections 507, 508, 510, 515, 701 and 711 of Pub. L. 95–87, which requires

applicants for special types of mining activities to provide descriptions, maps, plans and data of the proposed activity. This information will be used by the regulatory authority in determining if the applicant can meet the applicable performance standards for the special type of mining activity. Response is required to obtain a benefit.

*Bureau Form Number:* None.

*Frequency of Collection:* Once.

*Description of Respondents:* Applicants for coalmine permits and State Regulatory Authorities.

*Total Annual Responses:* 387.

*Total Annual Burden Hours:* 24,442.

*Total Non-Wage Costs:* 0.

INFORMATION COLLECTION SUMMARY FOR 30 CFR PART 785

| Section | Number of applicant responses | Number of State responses | Hours per applicant | Hours per State | Total hours requested | Current ICB hours | Changes to ICB |
|---|---|---|---|---|---|---|---|
| 785.13 | 6 | 6 | 110 | 40 | 900 | 900 | 0 |
| 785.14 | 4 | 4 | 250 | 420 | 2,680 | 2,680 | 0 |
| 785.15 | 50 | 50 | 150 | 40 | 9,500 | 9,500 | 0 |
| 785.16 | 5 | 5 | 10 | 40 | 250 | 250 | 0 |
| 785.17 | 6 | 6 | 60 | 10 | 420 | 420 | 0 |
| 785.18 | 7 | 6 | 10 | 10 | 130 | 130 | 0 |
| 785.19 | 1 | 1 | 300 | 7 | 307 | 307 | 0 |
| 785.20 | 35 | 34 | 25 | 30 | 1,895 | 1,895 | 0 |
| 785.22 | 1 | 1 | 40 | 24 | 64 | 64 | 0 |
| 785.25 | 80 | 79 | 80 | 79 | 8,296 | 0 | 8,296 |
| Total | 195 | 192 | ..... | ..... | 24,442 | 16,146 | 8,296 |

Under the Paperwork Reduction Act, OSM must obtain OMB approval of all information and recordkeeping requirements. No person is required to respond to an information collection request unless the form or regulation requesting the information has a currently valid OMB control (clearance) number. The control number appears in section 785.10. To obtain a copy of OSM's information collection clearance request contact John A. Trelease at (202) 208–2783 or by e-mail at *jtrelease@osmre.gov.*

Comments are invited on:

(a) Whether the proposed collection of information is necessary for SMCRA regulatory authorities to implement their responsibilities, including whether the information will have practical utility;

(b) The accuracy of OSM's estimate of the burden of the proposed collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of collection on the respondents.

By law, OMB must respond to OSM within 60 days of publication of this proposed rule, but may respond as soon as 30 days after publication. Therefore, to ensure consideration by OMB, you must send comments regarding these burden estimates or any other aspect of these information collection and recordkeeping requirements by July 21, 2008 to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, via e-mail to *OIRA_DOCKET@omb.eop.gov*, or via facsimile to (202) 395–6566. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202 SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.* Please include the OMB control number, 1029–0040, at the top of your correspondence.

*National Environmental Policy Act*

OSM has determined that these proposed regulations are categorically excluded from the National Environmental Policy Act (NEPA), 42 U.S.C. 4332(2)(C), pursuant to Department Manual 516 DM 2.3A(2), Section 1.10 of 516 DM 2, Appendix 1. In addition, we have determined that none of the ''extraordinary circumstances'' exceptions to the categorical exclusion applies.

*Data Quality Act*

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

*Clarity of This Regulation*

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, § 700.5); (5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed rule? (6) What else could we do to make the proposed rule easier to understand? Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

**List of Subjects**

*30 CFR Part 700*

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 724*

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 773*

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 785*

Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 816*

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

*30 CFR Part 817*

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

*30 CFR Part 845*

Administrative practice and procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 846*

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

*30 CFR Part 870*

Abandoned Mine Reclamation Fund, Reclamation fees, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 872*

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Surface mining, Underground mining.

*30 CFR Part 873*

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Surface mining, Underground mining.

*30 CFR Part 874*

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 875*

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 876*

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 879*

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Surface mining, Underground mining.

*30 CFR Part 880*

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 882*

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 884*

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 885*

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 886*

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 887*

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: May 2, 2008.

**C. Stephen Allred,**

*Assistant Secretary, Land and Minerals Management.*

For the reasons given in the preamble, we are proposing to amend 30 Chapter VII as set forth below:

## PART 700—GENERAL

1. The authority citation for part 700 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Amend § 700.5, by revising the definition for the term ''Fund'' and adding definitions for the terms ''AML,'' ''AML inventory,'' ''Eligible lands and water,'' ''Emergency,'' ''Expended,'' ''Extreme danger,'' ''Left or abandoned in either an unreclaimed or inadequately reclaimed condition,'' ''Project,'' ''Reclamation activity,'' and ''Reclamation program'' in alphabetical order to read as follows:

**§ 700.5 Definitions.**

* * * * *

*AML* means abandoned mine land(s).

*AML inventory* means OSM's listing of abandoned mine land problems eligible to be reclaimed using moneys from the Abandoned Mine Reclamation Fund or the Treasury as appropriate.

* * * * *

*Eligible lands and water* means land and water eligible for reclamation or drainage abatement expenditures under the Abandoned Mine Land program. Eligible lands and water are those which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes and left or abandoned in either an unreclaimed or inadequately reclaimed condition prior to August 3, 1977, and for which there is no continuing reclamation responsibility. However, lands and water damaged by coal mining operations after that date and on or before November 5, 1990, may also be eligible for reclamation if they meet the requirements specified in § 874.12(d) and (e) of this chapter. Following certification of the completion of all known coal problems, eligible lands and water for noncoal reclamation purposes are those sites that meet the eligibility requirements specified in § 875.14 of this chapter. For additional eligibility requirements for water projects, see § 874.14 of this chapter, and for lands affected by remining operations, see section 404 of SMCRA.

*Emergency* means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures.

* * * * *

*Expended* means that moneys have been obligated, encumbered, or committed by contract by the State, Tribe, or us for work to be accomplished or services to be rendered.

*Extreme danger* means a condition that could reasonably be expected to cause substantial physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed.

* * * * *

*Fund* means the Abandoned Mine Reclamation Fund established on the books of the U.S. Treasury for the purpose of accumulating revenues designated for reclamation of abandoned mine lands and other activities authorized by section 401 of SMCRA.

* * * * *

*Left or abandoned in either an unreclaimed or inadequately reclaimed*

*condition* means, for Abandoned Mine Land programs, lands and water:

(a) Which were mined or which were affected by such mining, wastebanks, processing or other mining processes prior to August 3, 1977, or between August 3, 1977, and November 5, 1990, as authorized pursuant to section 402(g)(4) of SMCRA, and on which all mining has ceased;

(b) Which continue, in their present condition, to degrade substantially the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health and safety of the public; and

(c) For which there is no continuing reclamation responsibility under State or Federal laws, except as provided in sections 402(g)(4) and 403(b)(2) of SMCRA.

* * * * *

*Project* means a delineated area containing one or more abandoned mine land problems. A project may be a group of related reclamation activities with a common objective within a political subdivision of a State or within a logical, geographically defined area, such as a watershed, conservation district, or county planning area.

* * * * *

*Reclamation activity* means the reclamation, abatement, control, or prevention of adverse effects of past mining by an Abandoned Mine Land program.

*Reclamation program* means a program established by a State or an Indian tribe in accordance with Title IV of SMCRA for reclamation of lands and water adversely affected by past mining, including the reclamation plan and annual applications for grants under the plan.

* * * * *

## PART 724—INDIVIDUAL CIVIL PENALTIES

3. The authority citation for part 724 continues to read as follows:

**Authority:** 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

4. Amend § 724.18 by revising paragraph (d) to read as follows:

### § 724.18 Payment of penalty.

* * * * *

(d) *Delinquent payment.* Following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty, any delinquent penalty shall be subject to interest at the rate established by the U.S. Department of the Treasury for late charges on late payments to the Federal Government. The Treasury current value of funds rate is published by the Fiscal Service in the notices section of the **Federal Register** and on Treasury's Web site. Interest on unpaid penalties will run from the date payment first was due until the date of payment. Failure to pay overdue penalties may result in one or more of the actions specified in § 870.23(a) through (f) of this chapter. Delinquent penalties are subject to late payment penalties specified in § 870.21(c) of this chapter and processing and handling charges specified in § 870.21(d) of this chapter.

## PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

5. The authority citation for part 773 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*, 16 U.S.C. 470 *et seq.*, 16 U.S.C. 661 *et seq.*, 16 U.S.C. 703 *et seq.*, 16 U.S.C. 668a *et seq.*, 16 U.S.C. 469 *et seq.*, and 16 U.S.C. 1531 *et seq.*

6. Amend § 773.13 by revising paragraph (a)(2) to read as follows:

### § 773.13 Unanticipated events or conditions at remining sites.

(a) * * *

(2) Resulted from an unanticipated event or condition at a surface coal mining and reclamation operation on lands that are eligible for remining under a permit that was held by the person applying for the new permit.

* * * * *

## PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

7. The authority citation for part 785 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

### § 785.25 [Amended]

8. In § 785.25, remove paragraph (c).

## PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

9. The authority citation for part 816 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.* and section 115 of Pub. L. 98–146.

10. In § 816.116, revise paragraphs (c)(2)(ii) and (c)(3)(ii) to read as follows:

### § 816.116 Revegetation: Standards for success.

* * * * *

(c) * * *

(2) * * *

(ii) Two full years for lands eligible for remining included in a permit for which a finding has been made under § 773.15(m) of this chapter. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands must equal or exceed the standards during the growing season of the last year of the responsibility period.

(3) * * *

(ii) Five full years for lands eligible for remining included in a permit for which a finding has been made under § 773.15(m) of this chapter. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands must equal or exceed the standards during the growing seasons of the last two consecutive years of the responsibility period.

* * * * *

## PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

11. The authority citation for part 817 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

12. In § 817.116, revise paragraphs (c)(2)(ii) and (c)(3)(ii) to read as follows:

### § 817.116 Revegetation: Standards for success.

* * * * *

(c) * * *

(2) * * *

(ii) Two full years for lands eligible for remining included in a permit for which a finding has been made under § 773.15(m) of this chapter. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands must equal or exceed the standards during the growing season of the last year of the responsibility period.

(c) * * *

(3) * * *

(ii) Five full years for lands eligible for remining included in a permit for which a finding has been made under § 773.15(m) of this chapter. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands must equal or exceed the standards during the growing seasons of the last two consecutive years of the responsibility period.

* * * * *

## PART 845—CIVIL PENALTIES

13. The authority citation for part 845 continues to read as follows:

**Authority:** 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, 31 U.S.C. 3701, Pub. L. 100–202, and Pub. L. 100–446.

14. In § 845.21, revise paragraph (b)(1) to read as follows:

**§ 845.21 Use of civil penalties for reclamation.**

* * * * *

(b) * * *

(1) Emergency projects as defined in § 700.5 of this chapter;

* * * * *

## PART 846—INDIVIDUAL CIVIL PENALTIES

15. The authority citation for part 846 continues to read as follows:

**Authority:** 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

16. Amend § 846.18 by revising paragraph (d) to read as follows:

**§ 846.18 Payment of penalty.**

* * * * *

(d) *Delinquent payment.* Following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty, any delinquent penalty shall be subject to interest at the rate established by the U.S. Department of the Treasury for late charges on late payments to the Federal Government. The Treasury current value of funds rate is published by the Fiscal Service in the notices section of the **Federal Register** and on Treasury's Web site. Interest on unpaid penalties will run from the date payment first was due until the date of payment. Failure to pay overdue penalties may result in one or more of the actions specified in §§ 870.23(a) through (f) of this chapter. Delinquent penalties are subject to late payment penalties specified in § 870.21(c) of this chapter and processing and handling charges specified in § 870.21(d) of this chapter.

## PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

17. The authority citation for part 870 continues to read as follows:

**Authority:** 28 U.S.C. 1746, 30 U.S.C. 1201 *et seq.*, and Pub. L. 105–277, sections 1701–1710

18. Revise § 870.1 to read as follows:

**§ 870.1 Scope.**

This Part sets out our procedures to collect fees for the Fund and to report coal production.

19. Amend § 870.5 as follows:

a. Revise the introductory text as set forth below; and

b. Remove the following definitions: ''Abandoned Mine Reclamation Fund or Fund'', ''Agency'', ''Allocate'', ''Eligible lands and water'', ''Emergency'', ''Extreme danger'', ''Indian Abandoned Mine Reclamation Fund or Indian Fund'', ''Indian reclamation program'', ''Left or abandoned in either an unreclaimed or inadequately reclaimed condition'', ''OSM'', ''Permanent facility'', ''Project'', ''Qualified hydrologic unit'', ''Reclamation activity'', ''Reclamation plan'', ''State Abandoned Mine Reclamation Fund or State Fund'', and ''State reclamation program''.

**§ 870.5 Definitions.**

As used in this Part—

* * * * *

20. Revise § 870.10 to read as follows:

**§ 870.10 Information collection.**

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of Part 870 and the OSM–1 Form and assigned control number 1029–0063. The information is used to maintain a record of coal produced nationwide each calendar quarter, the method of coal removal, the type of coal, and the basis for coal tonnage reporting. Persons must respond to meet the requirements of SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**§ 870.11 [Amended]**

21. Amend § 870.11 by removing paragraph (b) and redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively.

22. In § 870.13, revise the heading of paragraph (a), revise paragraph (b) and add paragraph (c) to read as follows:

**§ 870.13 Fee rates.**

(a) *Fees for coal produced for sale, transfer, or use through September 30, 2007.*

* * * * *

(b) *Fees for coal produced for sale, transfer, or use from October 1, 2007, through September 30, 2012.* Fees for coal produced for sale, transfer, or use from October 1, 2007, through September 30, 2012, are shown in the following table:

| Type of fee | Type of coal | Amount of fee |
|---|---|---|
| (1) Surface mining fee | Anthracite, bituminous, and subbituminous, including reclaimed. | (i) If value of coal is $ 3.15 per ton or more, fee is 31.5 cents per ton.<br>(ii) If value of coal is less than $ 3.15 per ton, fee is 10 percent of the value. |
| (2) Underground mining fee | Anthracite, bituminous, and subbituminous. | (i) If value of coal is $ 1.35 per ton or more, fee is 13.5 cents per ton.<br>(ii) If value of coal is less than $ 1.35 per ton, fee is 10 percent of the value. |
| (3) Surface and underground mining fee. | Lignite | (i) If value of coal is $ 4.50 per ton or more, fee is 9 cents per ton.<br>(ii) If value of coal is less than $ 4.50 per ton, fee is 2 percent of the value. |
| (4) In situ coal mining fee | All types other than lignite | 13.5 cents per ton based on Btu's per ton in place equated to the gas produced at the site as certified through analysis by an independent laboratory. |
| (5) In situ coal mining fee | Lignite | 9 cents per ton based on the Btu's per ton of coal in place equated to the gas produced at the site as certified through analysis by an independent laboratory. |

(c) *Fees for coal produced for sale, transfer, or use from October 1, 2012, through September 30, 2021.* The fees for coal produced for sale, transfer, or use from October 1, 2012, through September 30, 2021, are shown in the following table:

| Type of fee | Type of coal | Amount of fee |
|---|---|---|
| (1) Surface mining fee | Anthracite, bituminous, and subbituminous, including reclaimed coal. | (i) If value of coal is $ 2.80 per ton or more, fee is 28 cents per ton.<br>(ii) If value of coal is less than $ 2.80 per ton, fee is 10 percent of the value. |
| (2) Underground mining fee | Anthracite, bituminous, and subbituminous. | (i) If value of coal is $ 1.20 per ton or more, fee is 12 cents per ton.<br>(ii) If value of coal is less than $ 1.20 per ton, fee is 10 percent of the value. |
| (3) Surface and underground mining fee. | Lignite | (i) If value of coal is $ 4.00 per ton or more, fee is 8 cents per ton.<br>(ii) If value of coal is less than $ 4.00 per ton, fee is 2 percent of the value. |
| (4) In situ coal mining fee | All types other than lignite | 12 cents per ton based on Btu's per ton in place equated to the gas produced at the site as certified through analysis by an independent laboratory. |
| (5) In situ coal mining fee | Lignite | 8 cents per ton based on the Btu's per ton of coal in place equated to the gas produced at the site as certified through analysis by an independent laboratory. |

23. Revise §§ 870.14 through 870.17 to read as follows:

**§ 870.14 Determination of percentage-based fees.**

(a) If you pay a fee based on a percentage of the value of coal, you must include documentation supporting the claimed coal value with your fee payment and production report. We may review this information and any additional documentation we may require, including examination of your books and records. We may accept the valuation you claim, or we may determine another value of the coal.

(b) If we determine that a higher fee must be paid, you must pay the additional fee together with interest computed under § 870.21.

**§ 870.15 Reclamation fee payment.**

(a) You must pay the reclamation fee based on calendar quarter tonnage no later than 30 days after the end of each calendar quarter.

(b) Along with any fee payment due, you must submit to us a completed Coal Sales and Reclamation Fee Report (OSM–1 Form). You can file the OSM–1 Form either in paper format or in electronic format as specified in § 870.17. On the OSM–1 Form, you must report:

(1) The tonnage of coal sold, used, or transferred;

(2) The name and address of any person or entity who is the owner of 10 percent or more of the mineral estate for a given permit; and

(3) The name and address of any person or entity who purchases 10 percent or more of the production from a given permit, during the applicable quarter.

(c) If no single mineral owner or purchaser meets the 10 percent criterion in paragraphs (b)(2) and (b)(3) of this section, then you must report the name and address of the largest single mineral owner and purchaser. If several persons have successively transferred the mineral rights, you must include on the OSM–1 Form information on the last owner(s) in the chain before the permittee, i.e. the person or persons who have granted the permittee the right to extract the coal.

(d) At the time of reporting, you may designate the information required by paragraphs (b) and (c) of this section as confidential.

**§ 870.16 Acceptable payment methods.**

(a) If you owe total quarterly reclamation fees of $25,000 or more for one or more mines, you must:

(1) Use an electronic fund transfer mechanism approved by the U.S. Department of the Treasury;

(2) Forward payments by electronic transfer;

(3) Include the applicable Master Entity No.(s) (Part 1—Block 4 on the OSM–1 Form), and OSM Document No.(s) (Part 1—upper right corner of the OSM–1 Form) on the wire message; and

(4) Use our approved form or approved electronic form to report coal tonnage sold, used, or for which ownership was transferred to the address indicated in the Instructions for Completing the OSM–1 Form.

(b) If you owe less than $25,000 in quarterly reclamation fees for one or more mines, you may:

(1) Forward payments by electronic transfer in accordance with the procedures specified in paragraph (a) of this section; or

(2) Submit a check or money order payable to the Office of Surface Mining Reclamation and Enforcement in the same envelope with the OSM–1 Form to: Office of Surface Mining Reclamation and Enforcement, P.O. Box 360095M, Pittsburgh, Pennsylvania 15251.

(c) If you pay more than $25,000 by a method other than an electronic fund transfer mechanism approved by the U.S. Department of the Treasury, you will be in violation of the Surface Mining Control and Reclamation Act of 1977, as amended.

**§ 870.17 Filing the OSM–1 Form.**

(a) *Filing an OSM–1 Form electronically.* You may submit a quarterly electronic OSM–1 Form in place of a quarterly paper OSM–1 Form. Submitting the OSM–1 Form electronically is optional. If you submit your form electronically, you must use a methodology and medium approved by us and do one of the following:

(1) Maintain a properly notarized paper copy of the identical OSM–1 Form for review and approval by our Fee Compliance auditors (in order to comply with the notary requirement in SMCRA); or

(2) Submit an electronically signed and dated statement made under penalty of perjury that the information contained in the OSM–1 Form is true and correct.

(b) *Filing a paper OSM–1 Form.* Alternatively, you may submit a quarterly paper OSM–1 Form. If you choose to submit your form on paper, you must do one of the following:

(1) Submit a properly notarized copy of the OSM–1 Form; or

(2) Submit the OSM–1 Form with a signed and dated statement made under penalty of perjury that the information contained in the form is true and correct. Under the unsworn statement option, you must sign the following statement: ''I declare under penalty of perjury that the foregoing is true and correct. Executed on [date].''

24. In § 870.18, revise paragraph (b) to read as follows:

**§ 870.18 General rules for calculating excess moisture.**

* * * * *

(b) If OSM disallows any or all of an allowance for excess moisture, you must submit an additional fee plus interest computed according to § 870.21(a) and

penalties computed according to § 870.21(c).

* * * * *

25. Add new §§ 870.21 through 870.23 to read as follows:

**§ 870.21 Late payments.**

(a) Fee payments postmarked later than 30 days after the calendar quarter for which the fee was owed are subject to interest. Late reclamation fee payments are subject to interest at the rate established by the U.S. Department of the Treasury for late charges on payments to the Federal Government. The Treasury current value of funds rate is published annually in the **Federal Register** and on Treasury's Web site.

(b) We will charge interest on unpaid reclamation fees from the 31st day following the end of the calendar quarter for which the fee payment is owed to the date of payment. If you are delinquent, we will bill you monthly and initiate whatever action is necessary to collect full payment of all fees and interest.

(c) When a reclamation fee debt is more than 91 days overdue, a 6 percent annual penalty on the amount owed for fees will begin and will run until the date of payment. This penalty is in addition to the interest described in paragraph (a) of this section.

(d) For all delinquent fees, interest, and penalties, you must pay a processing and handling charge that we will set based upon the following components:

(1) For debts referred to a collection agency, the amount charged to us by the collection agency;

(2) For debts we processed and handled, a standard amount we set annually based upon similar charges by collection agencies for debt collection;

(3) For debts referred to the Office of the Solicitor within the U.S. Department of the Interior, but paid before litigation, the estimated average cost to prepare the case for litigation as of the time of payment;

(4) For debts referred to the Office of the Solicitor within the U.S. Department of the Interior, and litigated, the estimated cost to prepare and litigate a debt case as of the time of payment; and

(5) If not otherwise provided for, all other administrative expenses associated with collection, including, but not limited to, billing, recording payments, and follow-up actions.

(e) We will not charge prejudgment interest on any processing and handling charges.

**§ 870.22 Maintaining required production records.**

(a) If you engage in or conduct a surface coal mining operation, you must maintain up-to-date records that contain at least the following information:

(1) The tons of coal you produced, bought, sold, or transferred, the amount of money you received per ton, the name of person to whom you sold or transferred the coal, and the date of each sale or transfer;

(2) The tons of coal you used and your date of your consumption;

(3) The tons of coal you stockpiled or inventoried that are not classified as sold for fee computation purposes under § 870.12; and

(4) For in situ coal mining operations, the total Btu value of gas you produced, the Btu value of a ton of coal in place certified at least semiannually by an independent laboratory, and the amount of money you received for gas sold, transferred, or used.

(b) We must have access to your records of any surface coal mining operation for review. Your records must be available to us at reasonable times.

(c) We may inspect and copy any of your books or records that are necessary to substantiate the accuracy of your OSM–1 Form and payments. If the fee is paid at the maximum rate, we will not copy information relative to price. We will protect all copied information as authorized or required by the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

(d) You must maintain your books and records for 6 years from the end of the calendar quarter in which the fee was due or paid, whichever is later.

(e) If you do not maintain or make available your books and records as required in this section, we will estimate the fee due under this Part through use of average production figures based upon the nature and acreage of your coal mining operation.

(1) We will assess the fee at the amount we estimate plus an additional 20 percent to account for possible error in our fee liability estimate.

(2) After you receive our fee liability estimate, you may request that we revise that estimate based upon your information. However, you must demonstrate that our fee liability estimate is incorrect. You may do this by providing adequate documentation that we find to be acceptable and comparable to the information required in § 870.19(a).

**§ 870.23 Consequences of noncompliance.**

If you do not maintain adequate records, provide us with access to records of a surface coal mining operation, or pay overdue reclamation fees, including interest on late payments or underpayments, we may take one or more of the following actions:

(a) Start a legal action against you;

(b) Report you to the Internal Revenue Service;

(c) Report you to State agencies responsible for taxation;

(d) Report you to credit bureaus;

(e) Refer you to collection agencies; or

(f) Take some other appropriate action against you.

26. Revise part 872 to read as follows:

## PART 872—MONEYS AVAILABLE TO ELIGIBLE STATES AND INDIAN TRIBES

Sec.

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872.10 Information collection.
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872.26 What are minimum program make up funds?
872.27 How does OSM distribute and award minimum program make up funds?
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872.29 What are prior balance replacement funds?
872.30 How does OSM distribute and award prior balance replacement funds?
872.31 What may you use prior balance replacement funds for?
872.32 What are certified in lieu funds?
872.33 How does OSM distribute and award certified in lieu funds?
872.34 What may you use certified in lieu funds for?

**Authority:** 30 U.S.C. 1201 *et seq.*

**§ 872.1 What does this Part do?**

This Part sets forth procedures and general responsibilities for managing funds received under Title IV of the Surface Mining Control and Reclamation Act of 1977, as amended.

**§ 872.5 Definitions.**

As used in this Part—

*Allocate* means to identify moneys in our records at the time they are received by the Fund. The allocation process identifies moneys in the Fund by the type of funds collected, including the specific State or Indian tribal share.

*Award* means to approve our grant agreement authorizing you to draw down and expend program funds.

*Distribute* means to annually assign funds to a specific State or Indian tribe. After distribution, funds are available for award in a grant to that specific State or Indian tribe.

*Indian Abandoned Mine Reclamation Fund* or *Indian Fund* means a separate fund that an Indian tribe established to account for moneys we award under Parts 885 or 886 of this chapter or other moneys these regulations authorize to be deposited in the Indian Fund.

*Reclamation plan* or *State reclamation* plan means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and Part 884 of this chapter.

*State Abandoned Mine Reclamation Fund* or *State Fund* means a separate fund that a State established to account for moneys we award under Parts 885 or 886 of this chapter or other moneys these regulations authorize to be deposited in the State Fund.

**§ 872.10 Information collection.**

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of Part 872 and assigned it control number 1029–0054. The information is used to determine whether States and Indian tribes will be granted funds for reclamation activities. States and Indian tribes must respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**§ 872.11 Where do moneys in the Fund come from?**

Revenue to the Fund includes—

(a) Reclamation fees we collect under section 402 of SMCRA and Part 870 of this chapter;

(b) Amounts we collect from charges for use of land acquired or reclaimed with moneys from the Fund under Part 879 of this chapter;

(c) Moneys we recover through satisfaction of liens filed against privately owned lands reclaimed with moneys from the Fund under Part 882 of this chapter;

(d) Moneys we recover from the sale of lands acquired with moneys from the Fund or by donation;

(e) Moneys donated to us for the purpose of abandoned mine land reclamation; and

(f) Interest and any other income earned from investment of the Fund. We will credit interest and other income only to the Secretary's share.

**§ 872.12 Where do moneys distributed from the Fund and other sources go?**

(a) Each State or Indian tribe with an approved reclamation plan must establish an account to be known as a State or Indian Abandoned Mine Reclamation Fund. These funds will be managed in accordance with the OMB Circular A–102.

(b) Revenue for the State and Indian Abandoned Mine Reclamation Funds will include—(1) Amounts we granted for purposes of conducting the approved reclamation plan;

(2) Moneys collected from charges for uses of land acquired or reclaimed with moneys from the State or Indian Abandoned Mine Reclamation Fund under Part 879 of this chapter;

(3) Moneys recovered through the satisfaction of liens filed against privately owned lands;

(4) Moneys the State or Indian tribe recovered from the sale of lands acquired under Title IV of SMCRA; and

(5) Such other moneys as the State or Indian tribe decides should be deposited in the State or Indian Abandoned Mine Reclamation Fund for use in carrying out the approved reclamation program.

(c) Moneys deposited in State or Indian Abandoned Mine Reclamation Funds must be used to carry out the reclamation plan approved under Part 884 of this chapter and projects approved under § 886.27 of this chapter.

**§ 872.13 What moneys does OSM distribute each year?**

(a) Under Title IV of SMCRA, each Federal fiscal year we must distribute to you, the States and Indian tribes with approved reclamation plans, the moneys listed in this section. We will distribute all Fund moneys and other moneys from the Treasury that have been designated for mandatory distribution. We will provide information to you showing how we calculated your distribution. We will distribute the following moneys:

(1) State share funds to uncertified States as described in § 872.14;

(2) Tribal share funds to uncertified Indian tribes as described in § 872.17;

(3) Historic coal funds to uncertified States and Indian tribes as described in § 872.21;

(4) Minimum program make up funds to eligible uncertified States and Indian tribes as described in § 872.26;

(5) Prior balance replacement funds to certified and uncertified States and Indian tribes as described in § 872.29; and

(6) Certified in lieu funds to certified States and Indian tribes as described in § 872.32.

(b) We will calculate annual fee collections for coal produced in the previous Federal fiscal year on a net cash basis. This means that we will use collections that are paid for the current Federal fiscal year to adjust fees that were overpaid or underpaid in prior fiscal years.

(c) We will distribute any Congressionally-appropriated funds for grants to you out of the Federal expenses funds when the appropriation becomes available.

(d) You may apply for any or all distributed funds at any time after the distribution using the procedures in Part 885 of this chapter for certified States and Indian tribes or Part 886 for uncertified States and Indian tribes.

**§ 872.14 What are State share funds?**

''State share funds'' are moneys we distribute to you from your State share of the Fund each Federal fiscal year under section 402(g)(1)(A) of SMCRA. Your State share of the Fund is 50 percent of the reclamation fees we collected from within your State (excluding fees collected on Indian lands) and allocated to you, the State, in the Fund for coal produced in the previous fiscal year.

**§ 872.15 How does OSM distribute and award State share funds?**

(a) To be eligible to receive State share funds, you must meet the following criteria:

(1) You must have and maintain an approved reclamation plan under Part 884 of this chapter; and

(2) You cannot be certified under section 411(a) of SMCRA.

(b) If you meet the eligibility requirements in paragraph (a) of this section, we will distribute and award these State share funds to you as follows:

(1) We will annually distribute State share funds to you as shown in the following table:

| For the Federal fiscal year(s) beginning . . . | the amount of State share funds we annually distribute to you will be . . . |
|---|---|
| (i) October 1, 2007, and October 1, 2008 | 50 percent of your 50 percent share of reclamation fees collected on prior fiscal year coal production. |
| (ii) October 1, 2009, and October 1, 2010 | 75 percent of your 50 percent share of reclamation fees collected on prior fiscal year coal production. |
| (iii) October 1, 2011, and continuing through September 30, 2022 | 100 percent of your 50 percent share of reclamation fees collected on prior fiscal year coal production. |
| (iv) October 1, 2022 (fiscal year 2023) | the amount remaining in your State share of the Fund. |

(2) We will award these funds to you in grants according to the provisions of Part 886 of this chapter.

**§ 872.16 What may States use State share funds for?**

You may only use State share funds for:

(a) Coal reclamation under § 874.12 of this chapter;

(b) Water supply restoration under § 874.14 of this chapter;

(c) Noncoal reclamation under § 875.12 of this chapter that is requested under section 409(c) of SMCRA;

(d) Deposit into an acid mine drainage abatement and treatment fund under Part 876 of this chapter; and

(e) Land acquisition under § 879.11 of this chapter.

**§ 872.17 What are Tribal share funds?**

''Tribal share funds'' are moneys we distribute to you from your Tribal share of the Fund each Federal fiscal year under section 402(g)(1)(B) of SMCRA. Your Tribal share of the Fund is 50 percent of the reclamation fees we collected and allocated to you, the Indian tribe(s), in the Fund for coal produced in the previous fiscal year from the Indian lands in which you have an interest.

**§ 872.18 How will OSM distribute and award Tribal share funds?**

(a) To be eligible to receive Tribal share funds, you must meet the following criteria:

(1) You must have and maintain an approved reclamation plan under Part 884 of this chapter; and

(2) You cannot be certified under section 411(a) of SMCRA.

(b) If you meet the eligibility requirements in paragraph (a) of this section, we will distribute and award these Tribal share funds to you as follows:

(1) We will annually distribute Tribal share funds to you as shown in the following table:

| For the Federal fiscal year(s) beginning . . . | the amount of Tribal share funds we annually distribute to you will be . . . |
|---|---|
| (i) October 1, 2007, and October 1, 2008 | 50 percent of your 50 percent share of reclamation fees collected on prior fiscal year coal production. |
| (ii) October 1, 2009, and October 1, 2010 | 75 percent of your 50 percent share of reclamation fees collected on prior fiscal year coal production. |
| (iii) October 1, 2011, and continuing through September 30, 2022 | 100 percent of your 50 percent share of reclamation fees collected on prior fiscal year coal production. |
| (iv) October 1, 2022 (fiscal year 2023) | the amount remaining in your Tribal share of the Fund. |

(2) We will award these funds to you in grants according to the provisions of Part 886 of this chapter.

**§ 872.19 What may Indian tribes use Tribal share funds for?**

You may only use Tribal share funds for:

(a) Coal reclamation under § 874.12 of this chapter;

(b) Water supply restoration under § 874.14 of this chapter;

(c) Noncoal reclamation under § 875.12 of this chapter that is requested under section 409(c) of SMCRA;

(d) Deposit into an acid mine drainage abatement and treatment fund under Part 876 of this chapter; and

(e) Land acquisition under § 879.11 of this chapter.

**§ 872.20 What will OSM do with unappropriated AML funds currently allocated to the Rural Abandoned Mine Program?**

Under section 402(h)(4)(B) of SMCRA, we will make available any moneys that remain allocated to RAMP and that were not appropriated or moved to other allocations before December 20, 2006, for possible transfer to the three United Mine Workers of America (UMWA) health care plans described in section 402(h)(2) of SMCRA.

**§ 872.21 What are historic coal funds?**

(a) ''Historic coal funds'' are moneys provided under section 402(g)(5) of SMCRA based on the amount of coal produced before August 3, 1977, in your State or on Indian lands in which you have an interest. Under the 2006 amendments, each year we allocate and distribute 30 percent of annual AML fee collections for coal produced in the previous fiscal year plus 60 percent of any other revenue to the Fund as historic coal funds to supplement grants to States and Indian tribes.

(b) Historic coal funds also will include moneys we reallocate under sections 401(f)(3)(A)(i), 411(h)(1)(A)(ii), and 411(h)(4) of SMCRA, including:

(1) The moneys we reallocate based on prior balance replacement funds distributed under § 872.29, which will be available to supplement grants beginning with Federal fiscal year 2023; and

(2) The moneys we reallocate based on certified in lieu funds distributed under § 872.32, which will be available to supplement grants in Federal fiscal years 2009 through 2022.

**§ 872.22 How does OSM distribute and award historic coal funds?**

(a) To be eligible to receive historic coal funds, you must meet the following criteria:

(1) You must have and maintain an approved reclamation plan under Part 884 of this chapter;

(2) You cannot be certified under section 411(a) of SMCRA; and

(3) You must have unfunded Priority 1 and 2 coal problems remaining under sections 403(a)(1) and (2) of SMCRA.

(b) If you meet the eligibility requirements in paragraph (a) of this section, we distribute these moneys to you using a formula based on the

amount of coal historically produced before August 3, 1977, in your State or from the Indian lands concerned.

(c) We annually distribute historic coal funds to you as shown in the following table:

| For the Federal fiscal year(s) beginning . . . | the amount of historic coal funds we annually distribute to you will be . . . |
|---|---|
| (1) October 1, 2007, and October 1, 2008 | 50 percent of the amount we calculated using the formula described in paragraph (b) of this section. |
| (2) October 1, 2009, and October 1, 2010 | 75 percent of the amount we calculated using the formula described in paragraph (b) of this section. |
| (3) October 1, 2011, and continuing through September 30, 2022 | 100 percent of the amount we calculated using the formula described in paragraph (b) of this section. |
| (4) October 1, 2022 (fiscal year 2023), and thereafter | to the extent funds are available, the amount needed to reclaim your remaining Priority 1 and 2 coal problems. |

(d) In any given year, we will only distribute to you the historic coal funds that you need to reclaim your unfunded Priority 1 or 2 coal problems. Your distribution of State or Tribal share funds under §§ 872.14 or 872.17 plus your distribution of historic coal funds along with unused funds from prior allocations could be more than you need to reclaim your remaining high priority problems. If that occurs, we will reduce the historic coal funds we distribute to you to the amount that you need to fully fund reclamation of all your remaining Priority 1 or 2 coal problems.

(e) We will award these funds to you in grants according to the provisions of Part 886 of this chapter.

**§ 872.23 What may you use historic coal funds for?**

You may only use historic coal funds for:

(a) Coal reclamation under § 874.12 of this chapter;

(b) Water supply restoration under § 874.14 of this chapter;

(c) Noncoal reclamation under § 875.12 of this chapter that is requested under section 409(c) of SMCRA;

(d) Deposit into an acid mine drainage abatement and treatment fund under Part 876 of this chapter; and

(e) Land acquisition under § 879.11 of this chapter.

**§ 872.24 What are Federal expense funds?**

''Federal expense funds'' are moneys available in the Fund that are not allocated or distributed as State share funds (§ 872.14), Tribal share funds (§ 872.17), historic coal funds (§ 872.21), or minimum program make up funds (§ 872.26). Congress must appropriate Federal expense funds before we may expend them.

**§ 872.25 What may OSM use Federal expense funds for?**

(a) We may use Federal expense funds only for the purposes in section 402(g)(3) of SMCRA, which include the following:

(1) The Small Operator Assistance Program under section 507(c) of SMCRA (not more than $10 million annually);

(2) Emergency projects under State, Tribal, and Federal programs under section 410 of SMCRA;

(3) Nonemergency projects in States and on lands within the jurisdiction of Indian tribes that do not have an approved abandoned mine reclamation program under section 405 of SMCRA;

(4) The Secretary's administration of Title IV of SMCRA and this subchapter; and

(5) Projects authorized under section 402(g)(4) in States and on lands within the jurisdiction of Indian tribes that do not have an approved abandoned mine reclamation program under section 405 of SMCRA.

(b) We will not deduct moneys that we have annually allocated or distributed as Federal expense funds under sections 402(g)(3) or (4) of SMCRA for any State or Indian tribe from moneys we will annually allocate or distribute to a State or Indian tribe under the authority of sections 402(g)(1) or (5) of SMCRA.

(c) We will expend moneys under the authority in section 402(g)(3)(C) of SMCRA only in States or on Indian lands where the State or Indian tribe does not have an abandoned mine reclamation program approved under section 405 of SMCRA.

**§ 872.26 What are minimum program make up funds?**

(a) ''Minimum program make up funds'' are additional moneys we will distribute each Federal fiscal year to eligible States and Indian tribes to make up the difference between their total distribution of other funds and $3 million. The source of these moneys is the non-appropriated Federal expense funds.

(b) To be eligible to receive funds under this section, you must meet the following criteria:

(1) You must have and maintain an approved reclamation plan under Part 884 of this chapter;

(2) You cannot have certified under section 411(a) of SMCRA;

(3) The total amount you receive annually from State share funds (§ 872.14) or Tribal share funds (§ 872.17), historic coal funds (§ 872.21), and prior balance replacement funds (§ 872.29) must be less than $3 million; and

(4) You must need more than the total of funds you will receive from State or Tribal share, historic coal, and prior balance replacement funds to reclaim Priority 1 and 2 coal problems under sections 403(a)(1) and (2) of SMCRA in your State or on Indian lands within your jurisdiction.

(c) We will make funds available to the States of Missouri and Tennessee under this section to reclaim Priority 1 and 2 coal problems included in the AML inventory, provided each State has a reclamation plan approved under Part 884 of this chapter.

**§ 872.27 How does OSM distribute and award minimum program make up funds?**

(a) If you meet the eligibility requirements in § 872.26(b), we will distribute these minimum program make up funds to you as follows:

(1) We calculate your total distribution under this Part by first adding, in order, your prior balance replacement funds distribution (§ 872.29), your applicable State or Tribal share funds distribution (§§ 872.14 or 872.17), and your historic coal funds distribution (§ 872.21). If the sum of these funds is less than $3 million, we will calculate the amount of minimum program make up funds to add to your distribution under this section to increase it to that level.

(2) For each of the Federal fiscal years 2007 through 2022, we add minimum program make up funds to your combined distribution of prior balance replacement, State or Tribal share, and

historic coal funds as shown in the following table:

| For each of the Federal fiscal year(s) beginning . . . | The amount of minimum program make up funds we add to your distribution will be . . . |
|---|---|
| (i) October 1, 2007, and October 1, 2008 | 50 percent of the amount that we calculated should be added under paragraph (a)(1) of this section. |
| (ii) October 1, 2009, and October 1, 2010 | 75 percent of the amount that we calculated should be added under paragraph (a)(1) of this section. |
| (iii) October 1, 2011, and continuing through September 30, 2022 | 100 percent of the amount that we calculated should be added under paragraph (a)(1) of this section as long as you have at least $3 million of Priority 1 and 2 coal problems remaining. |
| (iv) October 1, 2022, and thereafter | to the extent funds are available, 100 percent of the amount that we calculated should be added under paragraph (a)(1) until you have less than $3 million of Priority 1 and 2 coal problems remaining. |

(b) We award these funds to you in grants according to the provisions of Part 886 of this chapter.

**§ 872.28 What may you use minimum program make up funds for?**

You may only use minimum program make up funds to reclaim Priority 1 and 2 coal problems under sections 403(a)(1) and (2) of SMCRA.

**§ 872.29 What are prior balance replacement funds?**

''Prior balance replacement funds'' are moneys we must distribute to you instead of the moneys we allocated to your State or Tribal share of the Fund before October 1, 2007, but did not distribute to you because Congress did not appropriate them. They come from general funds of the United States Treasury that are otherwise unappropriated. Under section 411(h)(1) of SMCRA, we distribute prior balance replacement funds to you, the State or Indian tribe, for seven years starting in the Federal fiscal year beginning October 1, 2008.

**§ 872.30 How does OSM distribute and award prior balance replacement funds?**

(a) We distribute prior balance replacement funds to you as follows:

(1) In an amount equal to the aggregate, unappropriated amount allocated to you before October 1, 2007, under sections 402(g)(1)(A) or (B) of SMCRA;

(2) If you are, or are not, certified under section 411(a) of SMCRA; and

(3) In seven equal annual installments beginning with the 2008 Federal fiscal year which starts on October 1, 2007.

(b) We award these funds to you in grants according to the provisions of Part 885 of this chapter for certified States and Indian tribes or Part 886 of this chapter for uncertified States and Indian tribes.

(c) At the same time we distribute prior balance replacement funds to you under this section, we transfer the same amount to historic coal funds from moneys in your State or Tribal share of the Fund that were allocated to you before October 1, 2007. The transferred funds will be available for annual grants under § 872.21 for the Federal fiscal year beginning October 1, 2022, and annually thereafter. We will allocate, distribute, and award the transferred funds according to the provisions of §§ 872.21, 872.22, and 872.23.

**§ 872.31 What may you use prior balance replacement funds for?**

(a) If you are certified under section 411(a) of SMCRA, you may only use prior balance replacement funds for those purposes your State legislature or Tribal council establishes, giving priority to addressing the impacts of mineral development.

(b) If you are not certified under section 411(a) of SMCRA, you may only use prior balance replacement funds for the purposes in section 403 of SMCRA, which include:

(1) Reclamation of coal problems under § 874.12 of this chapter;

(2) Water supply restoration under § 874.14 of this chapter; and

(3) Maintenance of the AML inventory.

**§ 872.32 What are certified in lieu funds?**

''Certified in lieu funds'' are moneys that we must distribute to you, the certified State or Indian tribe, in lieu of moneys allocated to your State or Tribal share of the Fund after October 1, 2007. Certified in lieu funds come from general funds of the United States Treasury that are otherwise unappropriated. Beginning with the 2009 Federal fiscal year which starts on October 1, 2008, we will distribute certified in lieu funds to you under section 411(h)(2) of SMCRA.

**§ 872.33 How does OSM distribute and award certified in lieu funds?**

(a) You must be certified under section 411(a) of SMCRA to receive certified in lieu funds.

(b) If you meet the eligibility requirement in paragraph (a) of this section, we will distribute these certified in lieu funds to you as follows:

(1) Starting in the Federal fiscal year that begins on October 1, 2008, we annually distribute funds to you based on 50 percent of reclamation fees received for coal produced during the previous Federal fiscal year in your State or on Indian lands within your jurisdiction;

(2) The funds we annually distribute to you are in lieu of moneys we otherwise would distribute to you from State share funds under § 872.14 or Tribal share funds under § 872.17 had you not been excluded from receiving those funds under section 401(f)(3)(B) of SMCRA; and

(3) We annually distribute certified in lieu funds to you as shown in the following table:

| In the Federal fiscal year(s) beginning on . . . | The amount of certified in lieu funds we annually distribute to you will be equal to . . . |
|---|---|
| (i) October 1, 2008 | 25 percent of your 50 percent share of annual reclamation fee collections. |
| (ii) October 1, 2009 | 50 percent of your 50 percent share of annual reclamation fee collections. |

| In the Federal fiscal year(s) beginning on . . . | The amount of certified in lieu funds we annually distribute to you will be equal to . . . |
|---|---|
| (iii) October 1, 2010 | 75 percent of your 50 percent share of annual reclamation fee collections. |
| (iv) October 1, 2011, and thereafter | 100 percent of your 50 percent share of annual reclamation fee collections. |

(c) We award these funds to you in grants according to the provisions of Part 885 of this chapter.

(d) At the same time we distribute certified in lieu funds to you under this section, we will transfer the same amount to historic coal funds and make those funds available for annual grants under § 872.21 that same Federal fiscal year. We will allocate, distribute, and award the transferred funds according to the provisions of §§ 872.21, 872.22, and 872.23.

(e) We will distribute to you the amounts we withhold under paragraph (b) of this section in two equal annual installments. We will do this in Federal fiscal years 2018 and 2019.

**§ 872.34 What may you use certified in lieu funds for?**

You may use certified in lieu funds for any purpose.

## PART 873—FUTURE RECLAMATION SET-ASIDE PROGRAM

27. The authority citation for part 873 is revised to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

28. Revise §§ 873.11 and 873.12 to read as follows:

**§ 873.11 Applicability.**

The provisions of this Part apply to funds awarded, as defined in § 872.5 of this chapter, under section 402(g)(6)(A) of SMCRA before its amendment on December 20, 2006, and their use by the States or Indian tribes for coal reclamation purposes after September 30, 1995.

**§ 873.12 Future set-aside program criteria.**

(a) Any State or Indian tribe may receive and retain, without regard to the limitation referred to in section 402(g)(1)(D) of SMCRA, up to 10 percent of the total of the funds distributed annually to such State or Indian tribe under sections 402(g) (1) and (5) of SMCRA for a future set-aside fund if such amounts were awarded before December 20, 2006. The State or Indian tribe must deposit all set-aside funds awarded into a special fund established under State or Indian tribal law. The State or Indian tribe must expend amounts awarded (together with all interest earned on such amounts) solely to achieve the priorities stated in section 403(a) of SMCRA.

(b) Moneys the State or Indian tribe deposited in the special fund account, together with any interest earned, are considered State or Indian tribal moneys.

## PART 874—GENERAL RECLAMATION REQUIREMENTS

29. The authority citation for part 874 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

30. Add § 874.5 to read as follows:

**§ 874.5 Definitions.**

As used in this Part—

*Reclamation plan* or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and Part 884 of this chapter.

31. Revise §§ 874.10 and 874.11 to read as follows:

**§ 874.10 Information collection.**

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of Part 874 and assigned it control number 1029–0113. This information is used to ensure that appropriate reclamation projects involving the incidental extraction of coal are conducted under the authority of section 528(2) of SMCRA and that selected projects contain sufficient environmental safeguards. Persons must respond to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**§ 874.11 Applicability.**

You must comply with the requirements in this Part if—

(a) You conduct reclamation projects using moneys from the Fund;

(b) You conduct reclamation projects using prior balance replacement funds provided to uncertified States and Indian tribes under § 872.29 of this chapter;

(c) You choose to use certified in lieu funds provided under § 872.32 of this chapter to address coal problems subsequent to certification; or

(d) You, a certified State or Indian tribe, at the direction of your State legislature or Tribal council, choose to use prior balance replacement funds received under § 872.29 of this chapter to address coal problems subsequent to certification.

32. Amend § 874.12 by revising paragraphs (c), (e), and (f) to read as follows:

**§ 874.12 Eligible coal lands and water.**

* * * * *

(c) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal government, or as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys from the Fund or any prior balance replacement funds provided under § 872.29 of this chapter may be used.

* * * * *

(e) An uncertified State or Indian tribe may expend funds made available under paragraphs 402(g)(1) and (5) of SMCRA and prior balance replacement funds under section 411(h)(1) of SMCRA for the reclamation and abatement of any site eligible under paragraph (d) of this section, if the State or Indian tribe, with the concurrence of the Secretary, makes the findings required in paragraph (d) of this section and the State or Indian tribe determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for the lands and water eligible under paragraphs (a), (b), or (c) of this section that qualify as a Priority 1 or 2 site under section 403(a) of SMCRA.

(f) With respect to lands eligible under paragraph (d) or (e) of this section, moneys available from sources outside the Fund or that are ultimately recovered from responsible parties must either be used to offset the cost of the reclamation or transferred to the Fund if not required for further reclamation activities at the permitted site.

* * * * *

33. Revise § 874.13 to read as follows:

**§ 874.13 Reclamation objectives and priorities.**

(a) When you conduct reclamation projects under this Part, you should follow OSM's ''Final Guidelines for Reclamation Programs and Projects'' (66 FR 31250, June 11, 2001) and the expenditures must reflect the following priorities in the order stated:

(1) *Priority 1:* The protection of public health, safety, and property from extreme danger of adverse effects of coal mining practices, including the restoration of land and water resources and the environment that:

(i) Have been degraded by the adverse effects of coal mining practices; and

(ii) Are adjacent to a site that has been or will be addressed to protect the public health, safety, and property from extreme danger of adverse effects of coal mining practices.

(2) *Priority 2:* The protection of public health and safety from adverse effects of coal mining practices, including the restoration of land and water resources and the environment that:

(i) Have been degraded by the adverse effects of coal mining practices; and

(ii) Are adjacent to a site that has been or will be addressed to protect the public health and safety from adverse effects of coal mining practices.

(3) *Priority 3:* The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity. Priority 3 land and water resources that are geographically contiguous with existing or remediated Priority 1 or 2 problems will be considered adjacent under paragraphs (a)(1)(ii) or (a)(2)(ii) of this section.

(b) This paragraph applies to State or Tribal share funds available under §§ 872.14 and 872.17 of this chapter and historic coal funds available under § 872.21 of this chapter. You may expend these funds to reclaim Priority 3 lands and waters, if either of the following conditions applies:

(1) You have completed all of the Priority 1 and Priority 2 reclamation in the jurisdiction of your State or Indian tribe; or

(2) The expenditure for Priority 3 reclamation is made in conjunction with the expenditure of funds for Priority 1 or Priority 2 reclamation projects, including Priority 1 or Priority 2 reclamation projects conducted before December 20, 2006. Expenditures under this paragraph must either:

(i) Facilitate the Priority 1 or Priority 2 reclamation; or

(ii) Provide reasonable savings towards the objective of reclaiming all Priority 3 land and water problems within the jurisdiction of your State or Indian tribe.

34. Amend § 874.14 by revising the section heading and paragraph (a) to read as follows:

**§ 874.14 Water supply restoration.**

(a) Any State or Indian tribe that has not certified completion of all coal-related reclamation under section 411(a) of SMCRA may expend funds under §§ 872.16, 872.19, 872.23, and 872.31 of this chapter for water supply restoration projects. For purposes of this section, ''water supply restoration projects'' are those that protect, repair, replace, construct, or enhance facilities related to water supplies, including water distribution facilities and treatment plants that have been adversely affected by coal mining practices. For funds awarded before December 20, 2006, any uncertified State or Indian tribe may expend up to 30 percent of the funds distributed to it for water supply restoration projects.

* * * * *

35. Revise § 874.16 to read as follows:

**§ 874.16 Contractor eligibility.**

To receive moneys from the Fund or Treasury funds provided to uncertified States and Indian tribes under § 872.29 of this chapter, every successful bidder for an AML contract must be eligible under §§ 773.12, 773.13, and 773.14 of this chapter at the time of contract award to receive a permit or be provisionally issued a permit to conduct surface coal mining operations.

## PART 875—CERTIFICATION AND NONCOAL RECLAMATION

36. The authority citation for part 875 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

37. Revise the heading for part 875 to read as set forth above.

38. Add § 875.5 to read as follows:

**§ 875.5 Definitions.**

As used in this Part—

*Reclamation plan* or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and Part 884 of this chapter.

39. Revise §§ 875.10 and 875.11 to read as follows:

**§ 875.10 Information collection.**

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of Part 875 and assigned it control number 1029–0103. This information establishes procedures and requirements for State and Indian tribes to conduct noncoal reclamation under abandoned mine land funding. The information is needed to assure compliance with SMCRA and the Omnibus Budget Reconciliation Act of 1990. Persons must respond to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**§ 875.11 Applicability.**

(a) If you are a State or Indian tribe that has not certified under section 411(a) of SMCRA, you must follow these noncoal reclamation requirements when you use State share funds under § 870.16, Tribal share funds under § 870.19, or historic coal funds under § 870.23 to conduct reclamation projects on lands or water affected by mining of minerals and materials other than coal.

(b) If you are a State or Indian tribe that has certified under section 411(a) of SMCRA, you may use prior balance replacement funds under § 872.31 of this chapter, certified in lieu funds under § 872.34 of this chapter, or both to:

(1) Maintain certification as required by §§ 875.13 and 875.14 by addressing eligible coal problems; and

(2) To implement the other requirements of this Part as provided for under an approved reclamation plan according to Part 884 of this chapter.

40. Amend § 875.12 by revising paragraph (c) to read as follows:

**§ 875.12 Eligible lands and water before certification.**

* * * * *

(c) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal Government or by the State as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, moneys sufficient to complete the reclamation may be sought under Part 886 of this chapter;

* * * * *

41. Amend § 875.13 by revising paragraph (a) introductory text and paragraph (a)(1) and by adding paragraph (d) to read as follows:

**§ 875.13 Certification of completion of coal sites.**

(a) The Governor of a State, or the equivalent head of an Indian tribe, may submit to the Secretary a certification of completion of coal sites. The certification must express the finding that the State or Indian tribe has achieved all existing known coal-related reclamation objectives for eligible lands and waters under section 404 of SMCRA or has instituted the necessary processes to reclaim any remaining coal related problems. In addition to the above finding, the certification of completion must contain:

(1) A description of both the rationale and the process used to arrive at the above finding for the completion of all coal-related reclamation under section 403(a)(1) through (3).

* * * * *

(d) The Director may, on his or her own initiative, make the certification referred to in paragraph (a) of this section on behalf of your State or Indian tribe if:

(1) Based upon information contained in the AML inventory, the Director determines that all coal reclamation projects meeting the priorities described in § 874.13(a) of this chapter in the jurisdiction of your State or Indian tribe have been completed; and

(2) Before making any determination, the Director provides the public an opportunity to comment through a notice in the **Federal Register**.

42. Revise § 875.14 to read as follows:

**§ 875.14 Eligible lands and water after certification.**

(a) Following certification, eligible noncoal lands, waters, and facilities are those-(1) Which were mined or processed for minerals or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status before August 3, 1977. However, for Federal lands, waters, and facilities under the jurisdiction of the Forest Service, the eligibility date is August 28, 1974. For Federal lands, waters and facilities under the jurisdiction of the Bureau of Land Management, the eligibility date is November 26, 1980; and

(2) For which there is no continuing reclamation responsibility under State or other Federal laws.

(b) If eligible coal problems are found or occur after certification, you must submit to us a plan that describes the approach and funds that will be used to address those problems in a timely manner. You may address any eligible coal problems with the certified in lieu funds that you have already received or will receive from § 872.32 of this chapter. You may, at the direction of the State legislature or Tribal council, also use the prior balance replacement funds received from § 872.29 of this chapter to address coal problems subsequent to certification. Any coal reclamation projects that you do must conform to sections 401 through 410 of SMCRA.

43. Revise § 875.16 to read as follows:

**§ 875.16 Exclusion of certain noncoal reclamation sites.**

You, the uncertified State or Indian tribe, may not use moneys from the Fund or from prior balance replacement funds provided under § 872.29 of this chapter of this chapter for the reclamation of sites and areas designated for remedial action under the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or that have been listed for remedial action under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*).

44. Revise § 875.20 to read as follows:

**§ 875.20 Contractor eligibility.**

Every successful bidder for any contract by an uncertified State or Indian tribe under this Part, or for a contract by a certified State or Indian tribe to undertake coal AML reclamation as required to maintain certification under this Part, must be eligible under §§ 773.12, 773.13, and 773.14 of this chapter at the time of contract award to receive a permit or be provisionally issued a permit to conduct surface coal mining operations. This section does not apply to any contract by a certified State or Indian tribe that is not for coal reclamation.

## PART 876—ACID MINE DRAINAGE TREATMENT AND ABATEMENT PROGRAM

45. The authority citation for part 876 is revised to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

46. Revise § 876.10 to read as follows:

**§ 876.10 Information collection.**

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of Part 876 and assigned it control number 1029–0104. OSM will use the information to determine if the State's or Indian tribe's Acid Mine Drainage Abatement and Treatment Programs is in compliance with legislative mandate. States and Indian tribes are required to respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

47. Revise § 876.12 to read as follows:

**§ 876.12 Eligibility.**

(a) Beginning December 20, 2006, any uncertified State or Indian tribe having an approved reclamation program may receive and retain, without regard to the limitation in section 402(g)(1)(D) of SMCRA, up to 30 percent of the total of the funds distributed annually to that State or Indian tribe under section 402(g)(1) of SMCRA (State or Tribal share) and section 402(g)(5) of SMCRA (historic coal funds). For funds awarded before December 20, 2006, any uncertified State or Indian tribe may retain up to 10 percent of the funds distributed to it for an acid mine drainage fund. All amounts set aside under this section must be deposited into an acid mine drainage abatement and treatment fund established under State or Indian tribal law.

(b) Before depositing funds under this Part, an uncertified State or Indian tribe must:

(1) Establish a special fund account providing for the earning of interest on fund balances; and

(2) Specify that moneys in the account may only be used for the comprehensive abatement of the causes and treatment of the effects of acid mine drainage within qualified hydrologic units (as defined in paragraph (c) of this section) affected by coal mining practices.

(c) As used in paragraph (b) of this section, ''qualified hydrologic unit'' means a hydrologic unit:

(1) In which the water quality has been significantly affected by acid mine drainage from coal mining practices in a manner that adversely impacts biological resources; and

(2) That contains lands and waters that are:

(i) Eligible under section 404 of SMCRA and include any of the priorities described in section 403(a) of SMCRA; and

(ii) The subject of the expenditure from the forfeiture of a bond required under section 509 of SMCRA or from other State sources to abate and treat acid mine drainage.

(d) After the conditions specified in paragraphs (a) and (b) of this section are met, OSM may approve a grant and the State or Indian tribe may deposit moneys into the special fund account. The moneys so deposited, together with any interest earned, must be considered State or Indian tribal moneys.

**§§ 876.13 and 876.14 [Removed]**

48. Remove §§ 876.13 and 876.14.

## PART 879—ACQUISITION, MANAGEMENT, AND DISPOSITION OF LANDS AND WATER

49. The authority citation for part 879 is revised to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

50. Add § 879.5 to read as follows:

### § 879.5 Definitions.

As used in this Part—

*Reclamation plan* or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and Part 884 of this chapter.

### § 879.10 [Removed]

51. Remove § 879.10.

52. Amend § 879.11 by revising paragraph (a) introductory text, paragraph (a)(2), paragraph (b), and paragraph (c) to read as follows:

### § 879.11 Land eligible for acquisition.

(a) We may acquire land adversely affected by past coal mining practices with moneys from the Fund. If approved in advance by us, you, an uncertified State or Indian tribe, may also acquire land adversely affected by past coal mining practices with moneys from the Fund or with prior balance replacement funds provided under § 872.29 of this chapter. Our approval must be in writing, and we must make a finding that the land acquisition is necessary for successful reclamation and that—

* * * * *

(2) Permanent facilities will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. For the purposes of this paragraph, ''permanent facility'' means any structure that is built, installed or established to serve a particular purpose or any manipulation or modification of the site that is designed to remain after the reclamation activity is completed, such as a relocated stream channel or diversion ditch.

(b) You, an uncertified State or Indian tribe, if approved in advance by us, may acquire coal refuse disposal sites, including the coal refuse, with moneys from the Fund and with prior balance replacement funds provided under § 872.29 of this chapter. We, OSM, also may use moneys from the Fund to acquire coal refuse disposal sites, including the coal refuse.

(1) Before the approval of the acquisition, the reclamation program seeking to acquire the site will make a finding in writing that the acquisition is necessary for successful reclamation and will serve the purposes of their reclamation program.

(2) Where an emergency situation exists and a written finding as set out in § 877.14 of this chapter has been made, we may acquire lands where public ownership is necessary and will prevent recurrence of the adverse effects of past coal mining practices.

(c) Land adversely affected by past coal mining practices may be acquired by us if the acquisition is an integral and necessary element of an economically feasible plan or project to construct or rehabilitate housing which meets the specific requirements in section 407(h) of SMCRA.

* * * * *

53. Amend § 879.15 by revising paragraph (h) to read as follows:

### § 879.15 Disposition of reclaimed land.

* * * * *

(h) All moneys received from disposal of land under this Part must be returned to us. We will handle all moneys received under this paragraph as unused funds in accordance with §§ 885.19 and 886.20 of this chapter.

## PART 880—MINE FIRE CONTROL

54. The authority citation for part 880 is revised to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

55. Amend § 880.5 by adding paragraph (h) to read as follows:

### § 880.5 Definitions.

* * * * *

(h) *Reclamation plan* or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and Part 884 of this chapter.

## PART 882—RECLAMATION ON PRIVATE LAND

56. The authority citation for part 882 is revised to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

57. Revise § 882.10 to read as follows:

### § 882.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of Part 882 and assigned it control number 1029–0057. This information is being collected to meet the mandate of section 408 of SMCRA, which allows the State or Indian tribe to file liens on private property that has been reclaimed under certain conditions. This information will be used by the regulatory authority to ensure that the State or Indian tribe has sufficient programmatic capability to file liens to recover costs for reclaiming private lands. States and Indian tribes are required to respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

58. Amend § 882.13 by revising paragraph (a)(1) to read as follows:

### § 882.13 Liens.

* * * * *

(a) * * *

(1) A lien must not be placed against the property of a surface owner who did not consent to, participate in or exercise control over the mining operation which necessitated the reclamation work.

* * * * *

## PART 884—STATE RECLAMATION PLANS

59. The authority citation for part 884 is revised to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

60. Add § 884.5 to read as follows:

### § 884.5 Definitions.

As used in this Part—

*Reclamation plan* or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and Part 884 of this chapter.

61. Revise § 884.11 to read as follows:

### § 884.11 State eligibility.

You, a State or Indian tribe, are eligible to submit a reclamation plan if you have eligible lands or water as defined in § 700.5 of this chapter within your jurisdiction. We may approve your proposed reclamation plan if you have an approved State regulatory program under section 503 of SMCRA, and you meet the other requirements of this chapter and SMCRA. The States of Tennessee and Missouri are exempt from the requirement for an approved State regulatory program by section 402(g)(8)(B) of SMCRA. The Navajo, Hopi, and Crow Indian tribes are exempt from the requirement for an approved regulatory program by section 405(k) of SMCRA.

62. Amend § 884.17 by revising the section heading and paragraph (b) to read as follows:

### § 884.17 Other uses by certified States and Indian tribes.

* * * * *

(b) Grant applications for uses other than coal reclamation by certified States and Indian tribes may be submitted in accordance with § 885.15 of this chapter.

63. Add part 885 as follows:

## PART 885—GRANTS FOR CERTIFIED STATES AND INDIAN TRIBES

Sec.
885.1 What does this Part do?
885.5 Definitions.
885.10 Information collection.
885.11 Who is eligible for a grant?
885.12 What can I use grant funds for?
885.13 What are the maximum grant amounts?
885.14 How long is my grant?
885.15 How do I apply for a grant?
885.16 After OSM approves my grant, what responsibilities do I have?
885.17 How can my grant be amended?
885.18 What audit, accounting, and administrative requirements must I meet?
885.19 What happens to unused funds from my grant?
885.20 What must I report?
885.21 What happens if I do not comply with applicable Federal law or the terms of my grant?
885.22 When and how can my grant be terminated for convenience?

**Authority:** 30 U.S.C. 1201 *et seq.*

### § 885.1 What does this Part do?

This Part sets forth procedures for grants to you, a State or Indian tribe that has certified under § 875.13 of this chapter that all known coal reclamation problems in your State or on Indian lands within your jurisdiction have been addressed. OSM's ''Final Guidelines for Reclamation Programs and Projects'' (66 FR 31250, June 11, 2001) may be used if applicable.

### § 885.5 Definitions.

As used in this Part—

*Award* means to approve our grant agreement authorizing you to draw down and expend program funds.

*Distribute* means to annually assign funds to a specific State or Indian tribe. After distribution, funds are available for award in a grant to that specific State or Indian tribe.

*Reclamation plan* or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and Part 884 of this chapter.

### § 885.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements for all Title IV grants and assigned clearance number 1029–0059. This information is being collected to obtain an estimate from you, the certified State or Indian tribe, of the funds you believe necessary to implement your program and to provide OSM with a means to measure performance results under the Government Performance and Results Act through your obligations of funds. Certified States and Indian tribes are required to respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

### § 885.11 Who is eligible for a grant?

You are eligible for grants under this Part if:

(a) You are a State or Indian tribe with a reclamation plan approved under Part 884 of this chapter; and

(b) You have certified under § 875.13 of this chapter that all known coal problems in your State or on Indian lands in your jurisdiction have been addressed.

### § 885.12 What can I use grant funds for?

(a) For all awards under this Part, you must use moneys for activities authorized in SMCRA and included in your approved reclamation plan or described in the grant application. In addition, you may use moneys granted under this Part to administer your approved reclamation program.

(b) You may use grant funds as established for each type of funds you receive. You may use prior balance replacement funds as provided under § 872.31 of this chapter. You may use certified in lieu funds as provided under § 872.34 of this chapter. You may use any moneys which may be available to you from the Fund for noncoal reclamation as authorized under section 411 of SMCRA and Part 875 of this chapter.

(c) You may use grant funds for any allowable cost as determined by the OMB cost principles in Circular A–87.

### § 885.13 What are the maximum grant amounts?

(a) You may apply at any time for a grant of any or all of the Title IV funds that are available to you.

(b) We will not award an amount greater than the total funds distributed to your State or Indian tribe in the current annual fund distribution less any previous awards of current year funds, plus any funds distributed to you in previous years but not awarded, plus any unexpended funds recovered from previous grants and made available to you under § 885.19 of this chapter.

(c) Funds for the current fiscal year will be available for award after the annual fund distribution described in § 872.13 of this chapter.

(d) Whenever you request it, we will give you information on the amounts and types of funds that are currently available to you.

### § 885.14 How long is my grant?

The performance period for your grant will be the time period you request in your grant application.

### § 885.15 How do I apply for a grant?

(a) You must use application forms and procedures specified by OSM.

(b) We will award your grant as soon as practicable but no more than 30 days after we receive your complete application.

(c) If your application is not complete, we will inform you as soon as practicable of the additional information we need to receive from you before we can process the award.

(d) You must agree to expend the funds of the grant in accordance with SMCRA, applicable Federal laws and regulations, and applicable OMB and Treasury Circulars.

### § 885.16 After OSM approves my grant, what responsibilities do I have?

(a) When we award your grant, we will send you a written grant agreement stating the terms of the grant.

(b) After you are awarded a grant, you may assign functions and funds to other Federal, State, or local organizations. However, we will hold you responsible for the overall administration of that grant, including the proper use of funds and reporting.

(c) The grant award constitutes an obligation of Federal funds. You accept the grant and its conditions once you initiate work under the agreement or draw down awarded funds.

(d) Although we have approved the grant agreement, you must ensure that any applicable laws, clearances, permits, or requirements are met before you expend funds for projects other than coal reclamation under Part 874.

(e) If you conduct a coal reclamation project under Part 874 of this chapter, you must not expend any funds until we have ensured that all necessary actions have been taken by you and us to ensure compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and any other applicable laws, clearances, permits or requirements.

(f) To the extent technologically and economically feasible, you must use fuel other than petroleum or natural gas for all public facilities that are planned, constructed, or modified in whole or in part with Title IV grant funds.

(g) You must not expend more funds than we have awarded. Our award of any grant does not commit or obligate the United States to award any

continuation grant or to enter into any grant revision, including grant increases to cover cost overruns.

**§ 885.17 How can my grant be amended?**

(a) A grant amendment is a change of terms or conditions of the grant agreement. An amendment may be initiated by you or by us.

(b) You must promptly notify us in writing, or we must promptly notify you in writing, of events or proposed changes that may require a grant amendment.

(c) All requirements and procedures for grant amendments will follow 43 CFR part 12.

(d) We must award your amended grant agreement within 20 days of receiving your request.

**§ 885.18 What audit, accounting, and administrative requirements must I meet?**

(a) You must comply with the audit requirements of the OMB Circular A–133.

(b) You must follow procedures governing grant accounting, payment, records, property, and management contained in 43 CFR part 12.

**§ 885.19 What happens to unused funds from my grant?**

All program grant funds are available until expended. If there are any unexpended funds after your grant is completed, we will deobligate the funds when we close your grant. We will make these unused funds available for re-award to the same certified State or Indian tribe to which they were originally distributed. You may apply for unused funds whenever you choose to request them either in a new grant award or as an amendment to an existing open grant.

**§ 885.20 What must I report?**

(a) For each grant, you must annually report to us the performance and financial information that we request.

(b) Upon completion of each grant, you must report to us final performance and financial information that we request.

(c) You must use the AML inventory to maintain a current list of AML problems and to report annual reclamation accomplishments with grant funds.

(1) If you conduct reclamation projects, you must update the AML inventory for each reclamation project you complete as you complete it.

(2) We must approve any amendments to the AML inventory after December 20, 2006. We define ''amendment'' as any coal problems added to the AML inventory in a new or existing problem area.

**§ 885.21 What happens if I do not comply with applicable Federal law or the terms of my grant?**

If you or your subgrantee materially fails to comply with an award, a reclamation plan, or a Federal statute or regulation, including statutes relating to nondiscrimination, we may take appropriate remedial actions. Enforcement actions and procedures must follow 43 CFR part 12.

**§ 885.22 When and how can my grant be terminated for convenience?**

Either you or we may terminate the grant for convenience following the procedures in 43 CFR part 12.

64. Revise part 886 to read as follows:

## PART 886—RECLAMATION GRANTS FOR UNCERTIFIED STATES AND INDIAN TRIBES

Sec.

886.1 What does this Part do?
886.5 Definitions.
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886.11 Who is eligible for a grant?
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886.16 After OSM approves my grant, what responsibilities do I have?
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886.18 What audit and administrative requirements must I meet?
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886.21 What must I report?
886.22 What records must I maintain?
886.23 What actions can OSM take if I do not comply with the terms of my grant?
886.24 What procedures will OSM follow to reduce, suspend, or terminate my grant?
886.25 How can I appeal a decision to reduce, suspend, or terminate my grant?
886.26 When and how can my grant be terminated for convenience?
886.27 What special procedures apply to Indian lands not subject to an approved Tribal reclamation program?

**Authority:** 30 U.S.C. 1201 *et seq.*

**§ 886.1 What does this Part do?**

This Part sets forth procedures for grants to you, an uncertified State or Indian tribe, to reclaim eligible lands and water and conduct other activities necessary to carry out your approved reclamation plan. OSM's ''Final Guidelines for Reclamation Programs and Projects'' (66 FR 31250, June 11, 2001) should be used as applicable.

**§ 886.5 Definitions.**

As used in this Part—

*Award* means to approve our grant agreement authorizing you to draw down and expend program funds.

*Distribute* means to annually assign funds to a specific State or Indian tribe. After distribution, funds are available for award in a grant to that specific State or Indian tribe.

*Reclamation plan* or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and Part 884 of this chapter.

**§ 886.10 Information collection.**

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of Part 886, and Forms OSM–47, OSM–49, and OSM–51, and assigned clearance number 1029–0059. This information is being collected to obtain an estimate from you the uncertified State or Indian tribe of the funds you believe necessary to implement your reclamation program and to provide OSM with a means to measure performance results under the Government Performance and Results Act through State and Tribal obligations of funds. Uncertified States and Indian tribes are required to respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**§ 886.11 Who is eligible for a grant?**

You are eligible for grants under this Part if:

(a) You are a State or Indian tribe with a reclamation plan approved under Part 884 of this chapter; and

(b) You have not certified that all known coal problems in your State or on Indian lands in your jurisdiction have been addressed.

**§ 886.12 What can I use grant funds for?**

(a) You must use moneys granted under this Part to administer your approved reclamation program and to carry out the specific reclamation and other activities authorized in SMCRA as included in your reclamation plan or your grant application.

(b) We award grants for reclamation of eligible lands and water in accordance with sections 404 and 409 of SMCRA and §§ 874.12 and 875.12 of this chapter, and in accordance with the priorities stated in section 403 of SMCRA and § 874.13 of this chapter.

(c) You may use grant funds as established in this chapter for each type of funds you receive in your AML grant. You may use State share funds as provided in § 872.16 of this chapter; Tribal share funds as in § 872.19 of this chapter; historic coal funds as in

§ 872.23 of this chapter; minimum program make up funds as in § 872.28 of this chapter; prior balance replacement funds as in § 872.31 of this chapter; and federal expense funds as in § 872.25 of this chapter and in the appropriation.

(d) You may use grant funds for acquisition of land or interests in land, and any mineral or water rights associated with the land, for up to 90 percent of the costs.

(e) You may use grant funds only for costs which are allowable as determined by OMB cost principles in Circular A–87.

**§ 886.13 What are the maximum grant amounts?**

(a) You may apply at any time for a grant of any or all of the program funds that are distributed to you.

(b) We will not award an amount greater than the total funds distributed to your State or Indian tribe in the current annual fund distribution, less any previous awards of current year funds, plus any funds distributed to you in previous years but not awarded, plus any unexpended funds recovered from previous grants and made available to you under § 886.20 of this chapter.

(c) Funds for the current fiscal year will be available for award after the annual fund distribution described in § 872.13 of this chapter.

(d) Whenever you request it, we will give you information on the amounts and types of funds that are currently available to you.

**§ 886.14 How long will my grant be?**

(a) We will approve a grant period on the basis of the information contained in the grant application showing that projects to be funded will fulfill the objectives of SMCRA and the approved reclamation plan.

(b) The grant period will normally be for 3 years.

(c) We may extend the grant period at your request. We will normally approve one extension for up to one additional year.

(d) The grant period for funding your administrative costs will not normally exceed the first year of the grant.

(e) At your request, we may award or extend grants containing State or Tribal share funds distributed to you in Fiscal Years 2008, 2009, or 2010 for a budget period of up to five years.

**§ 886.15 How do I apply for a grant?**

(a) You must use application forms and procedures specified by OSM.

(b) We will approve or disapprove your grant application within 60 days of receipt.

(c) If we do not approve your application, we will inform you in writing of the reasons for disapproval. We may propose modifications if appropriate. You may resubmit the application or appropriate revised portions of the application. We will process the revised application as an original application.

(d) You must agree to carry out activities funded by the grant in accordance with SMCRA, applicable Federal laws and regulations, and applicable OMB and Treasury Circulars.

(e) We will not require complete copies of plans and specifications for projects either before the grant is approved or at the start of the project. However, after the start of the project, we may review your plans and specifications at your office, the project site, or any other appropriate site.

**§ 886.16 After OSM approves my grant, what responsibilities do I have?**

(a) When we award your grant, we will send you a written grant agreement stating the terms of the grant.

(b) After you are awarded a grant, you may assign functions and funds to other Federal, State, or local agencies. However, we will hold you responsible for the overall administration of that grant, including the proper use of funds and reporting.

(c) The grant award constitutes an obligation of Federal funds. You accept the grant and its conditions once you initiate work under the agreement or draw down awarded funds.

(d) Although we have approved the grant agreement, you must not expend any construction funds until you receive a written authorization to proceed with reclamation on the individual project. Our Authorization to Proceed ensures that both you and we have taken all actions necessary to ensure compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and any other applicable laws, clearances, permits, or requirements.

(e) You must enter coal problems in the AML inventory before you expend funds on design or construction activities for a site. We must approve any amendments to the AML inventory made after December 20, 2006. For purposes of this section, we define ''amendment'' as any coal problem added to the AML inventory in a new or existing problem area and any Priority 3 coal problem in the AML inventory that is elevated to either Priority 1 or Priority 2 status.

(1) For emergency projects conducted under section 410 of SMCRA, our finding that an emergency condition exists constitutes our approval for the abandoned mine lands problem to be entered into the AML inventory.

(2) We must approve amendments to the AML inventory for non-emergency coal problems before you, the State or Indian tribe, begin project development or design or use funds for construction activities. In projects where development and design is minimal, this approval may occur during the Authorization to Proceed process.

(f) To the extent technologically and economically feasible, you must use fuel other than petroleum or natural gas for all public facilities that are planned, constructed, or modified in whole or in part with abandoned mine land grant funds.

(g) You must not expend more funds than we have awarded. Our award of any grant does not commit or obligate the United States to award any continuation grant or to enter into any grant revision, including grant increases to cover cost overruns.

**§ 886.17 How can my grant be amended?**

(a) A grant amendment is a change of the terms or conditions of the grant agreement. An amendment may be initiated by you or by us.

(b) You must promptly notify us in writing, or we must promptly notify you in writing, of events or proposed changes that may require a grant amendment.

(c) All procedures for grant amendments will follow 43 CFR part 12.

(d) We must approve or disapprove the amendment within 30 days of receiving your request.

**§ 886.18 What audit and administrative requirements must I meet?**

(a) You must comply with the audit requirements of the OMB Circular A–133.

(b) You must follow administrative procedures governing grant payments, property, and related requirements contained in 43 CFR part 12.

**§ 886.19 How must I account for grant funds?**

You must do all of the following in accordance with the requirements of 43 CFR part 12:

(a) Accurately and timely account for grant funds;

(b) Adequately safeguard all funds, property, and other assets and assure that they are used solely for authorized purposes;

(c) Provide a comparison of actual amounts spent with budgeted amounts for each grant;

(d) Request any cash advances as closely as possible to the actual time of the disbursement; and

(e) Design a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

**§ 886.20 What happens to unused funds from my grant?**

(a) If there are any unexpended funds after your grant is completed, we will deobligate the funds when we close your grant. We will treat unused funds as follows:

(1) We will transfer any State share funds under § 872.14 of this chapter or Tribal share funds under § 872.17 that were not expended within three years of the date they were awarded in a grant, except five years for funds awarded in Fiscal Years 2008, 2009, and 2010, to historic coal funds, § 872.21 of this chapter. We will distribute any funds transferred to historic coal in the next annual distribution in the same way as historic coal funds from fee collections during that fiscal year.

(2) We will hold any unused Federal expense funds under § 872.24 of this chapter for distribution to any State or Indian tribe as needed for the activity for which the funds were appropriated.

(3) We will make unused funds of all other types available for re-award to the same State or Indian tribe to which they were originally distributed. This includes historic coal funds under § 872.21 of this chapter, minimum program make up funds under § 872.26 of this chapter, and prior balance replacement funds under § 872.29 of this chapter.

(b) If you have any State share funds or Tribal share funds that were distributed to you in an annual distribution under §§ 872.15 or 872.18 of this chapter but that were not awarded to you in grant within 3 years of the date they were distributed, or 5 years for funds distributed in Fiscal Years 2008, 2009, and 2010, we will transfer the unawarded funds to the historic coal fund under § 872.21 of this chapter and distribute them in the next annual distribution.

**§ 886.21 What must I report?**

(a) For each grant, you must annually report to us the performance and financial information that we specify.

(b) Upon completion of each grant, you must submit to us final performance, financial, and property reports, and any other information that we specify.

(c) When you complete each reclamation project, you must update the AML inventory.

**§ 886.22 What records must I maintain?**

You must maintain complete records in accordance with 43 CFR Part 12. Your records must support the information you reported to us. This includes, but is not limited to, books, documents, maps, and other evidence. Accounting records must document procedures and practices sufficient to verify:

(a) The amount and use of all Title IV funds received; and

(b) The total direct and indirect costs of the reclamation program for which you received the grant.

**§ 886.23 What actions can OSM take if I do not comply with the terms of my grant?**

(a) If you, or your subgrantee, fail to comply with the terms of your grant, we may take one or more of the following remedial actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending your correction of the deficiency;

(2) Disallow (that is, deny both use of Federal funds and matching credit for non-Federal funds) all or part of the cost of the activity or action not in compliance;

(3) Wholly or partly reduce, suspend or terminate the current award for your program;

(4) Withhold further grant awards for the program; or

(5) Take other remedies that may be legally available.

(b) If we terminate your State regulatory administration and enforcement grant, provided under Part 735 of this chapter, for failure to implement, enforce, or maintain an approved State regulatory program or any part thereof, we will terminate the grant awarded under this Part. This paragraph does not apply to the States of Missouri or Tennessee under section 402(g)(8)(B) of SMCRA, or to the Navajo, Hopi and Crow Indian tribes under section 405(k) of SMCRA.

(c) If you fail to enforce the financial interest provisions of Part 705 of this chapter, we will terminate the grant.

(d) If you fail to submit reports required by this Part or Part 705 of this chapter, we will take appropriate remedial actions. We may terminate the grant.

(e) If you fail to submit a reclamation plan amendment as required by § 884.15 of this chapter, we may reduce, suspend, or terminate all existing AML grants in whole or in part or may refuse to process all future grant applications.

(f) If you are not in compliance with all Federal statutes relating to nondiscrimination, including but not limited to the following, we will terminate the grant:

(1) Title VI of the Civil Rights Act of 1964, Pub. L. 88–352, 78 Stat. 252 (42 U.S.C. 2000d *et seq.*). ''Nondiscrimination in Federally Assisted Programs,'' which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and the implementing regulations in 43 CFR part 17.

(2) Executive Order 11246, as amended by Executive Order 11375, ''Equal Employment Opportunity,'' requiring that employees or applicants for employment not be discriminated against because of race, creed, color, sex, or national origin, and the implementing regulations in 40 CFR part 60.

(3) Section 504 of the Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 355 (29 U.S.C. 794), as amended by Executive Order 11914, ''Nondiscrimination with Respect to the Handicapped in Federally Assisted Programs.''

**§ 886.24 What procedures will OSM follow to reduce, suspend, or terminate my grant?**

We will use the following procedures to reduce, suspend, or terminate your grant:

(a) We must give you at least 30 days written notice of intent to reduce, suspend, or terminate a grant. An OSM official authorized to approve your grant must sign our notice of intent. We must send this notice by certified mail, return receipt requested. Our notice must include the reasons for the proposed action and the proposed effective date of the action.

(b) We must give you opportunity for consultation and remedial action before we reduce or terminate a grant.

(c) We must notify you in writing of the termination, suspension, or reduction of the grant. The notice must be signed by the authorized approving official and sent by certified mail, return receipt requested.

(d) Upon termination, you must refund to us that remaining portion of the grant money not encumbered. However, you may retain any portion of the grant that is required to meet contractual commitments made before the effective date of termination.

(e) You must not make any new commitments of grant funds after receiving notification of our intent to terminate the grant without our approval.

(f) We may allow termination costs as determined by applicable Federal cost principles listed in OMB Circular A–87.

**§ 886.25 How can I appeal a decision to reduce, suspend, or terminate my grant?**

(a) Within 30 days of our decision to reduce, suspend, or terminate a grant, you may appeal the decision to the Director.

(1) You must include in your appeal a statement of the decision being appealed and the facts that you believe justify a reversal or modification of the decision.

(2) The Director must decide the appeal within 30 days of receipt.

(b) Within 30 days of a decision by the Director to reduce, suspend, or terminate a grant, you may appeal the decision to the Department of the Interior's Office of Hearings and Appeals. You must include in the appeal a statement of the decision being appealed and the facts that you believe justify a reversal or modification of the decision.

**§ 886.26 When and how can my grant be terminated for convenience?**

Either you or we may terminate or reduce a grant if both parties agree that continuing the program would not produce benefits worth the additional costs. We will handle a termination for convenience as an amendment to the grant to be approved by the OSM official authorized to approve your grant.

**§ 886.27 What special procedures apply to Indian lands not subject to an approved Tribal reclamation program?**

(a) This section applies to Indian lands not subject to an approved Tribal reclamation program. The Director is authorized to mitigate emergency situations or extreme danger situations arising from past mining practices and begin reclamation of other areas determined to have high priority on such lands.

(b) The Director is authorized to receive proposals from Indian tribes for projects that should be carried out on Indian lands subject to this section and to carry out these projects under Parts 872 through 882 of this chapter.

(c) For reclamation activities carried out under this section on Indian lands, the Director shall consult with the Indian tribe and the Bureau of Indian Affairs office having jurisdiction over the Indian lands.

(d) If a proposal is made by an Indian tribe and approved by the Director, the Tribal governing body shall approve the project plans. The costs of the project may be charged against Federal expense funds under § 872.25 of this chapter.

(e) Approved projects may be carried out directly by the Director or through such arrangements as the Director may make with the Bureau of Indian Affairs or other agencies.

## PART 887—SUBSIDENCE INSURANCE PROGRAM GRANTS

65. The authority citation for part 887 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

66. Revise § 887.1 to read as follows:

**§ 887.1 Scope.**

This Part sets forth the procedures for grants to you, a State or Indian tribe with an approved reclamation plan to establish, administer, and operate a self-sustaining individual State or Indian tribe administered program to insure private property against damages caused by land subsidence resulting from underground coal mining.

**§ 887.3 [Removed]**

67. Remove § 887.3.

68. Amend § 887.5 by revising the definition of ''Self-sustaining,'' removing the definition of ''State Administered'' and adding the definitions of ''reclamation plan or State reclamation plan'' and ''State or Indian tribe administered'' to read as follows:

**§ 887.5 Definitions.**

* * * * *

*Reclamation plan* or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and Part 884 of this chapter.

*Self-sustaining* means maintaining an insurance rate structure which is designed to be actuarially sound. Self-sustaining requires that State or Indian tribal subsidence insurance programs provide for recovery of payments made in settlement for damages from any party responsible for the damages under the law of the State or Indian tribe. Actuarial soundness implies that funds are sufficient to cover expected losses and expenses including a reasonable allowance for underwriting services and contingencies. Self-sustaining must not preclude the use of funds from other non-Federal sources.

*State or Indian tribe administered* means administered either directly by a State or Indian tribe or for a State or Indian tribe through a State or Indian tribal authorized commission, board, contractor such as an insurance company, or other entity subject to State or Indian tribal direction.

69. Revise §§ 887.10 through 887.13 to read as follows:

**§ 887.10 Information collection.**

In accordance with 44 U.S.C. 3501 *et seq.*, the OMB has approved the information collection requirements of Part 887 and assigned it control number 1029–0107. This information is being collected to support State and Indian tribal grant requests for moneys for the establishment, administration, and operation of self-sustaining State or Indian tribal administered subsidence insurance programs. States and Indian tribes are required to respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**§ 887.11 Eligibility for grants.**

You are eligible for grants under this Part if you are a State or Indian tribe with a reclamation plan approved under Part 884 of this chapter. If you are uncertified, you must have State share funds available under § 872.14 of this chapter or Tribal share funds available under § 872.17 of this chapter. If you have certified completion of coal reclamation under section 411(a) of SMCRA, you must have certified in lieu funds available under § 872.32 of this chapter, or prior balance replacement funds available under § 872.29 of this chapter if the State legislature or Tribal council has established this purpose.

**§ 887.12 Coverage and amount of grants.**

(a) You may use moneys granted under this Part to develop, administer, and operate a subsidence insurance program to insure private property against damages caused by subsidence resulting from underground coal mining. The moneys may be used to cover your costs for services and materials according to OMB cost principles, Circular A–87. You may use eligible grant moneys to cover capitalization requirements and initial reserve requirements mandated by applicable State or Tribal law provided use of such moneys is consistent with the 43 CFR part 12.

(b) You must submit a grant application under the procedures of Part 885 of this chapter for certified States and Indian tribes or Part 886 of this chapter for uncertified States or Indian tribes. Your application must include the following:

(1) A narrative statement describing how the subsidence insurance program is ''State or Indian tribe administered''; and

(2) A narrative statement describing how the funds requested will achieve a self-sustaining individual State or Indian tribe administered program to insure private property against subsidence resulting from underground coal mining.

(c) Grants awarded to you under this Part cannot exceed a cumulative total

over the lifetime of the program of $3 million.

(d) You may not use grant moneys from the Fund for lands that are ineligible for reclamation funding under Title IV of SMCRA.

(e) Insurance premiums must be considered program income and must be used to further eligible subsidence insurance program objectives in accordance with 43 CFR part 12.

**§ 887.13 Grant period.**

The grant funding period must not exceed 8 years from the time we approve the grant. You must return any unexpended funds remaining at the end of any grant period to us according to 43 CFR part 12.

70. Revise § 887.15 to read as follows:

**§ 887.15 Grant administration requirements and procedures.**

The requirements and procedures for grant administration set forth in Part 885 of this chapter for reclamation grants to certified States and Indian tribes or in Part 886 of this chapter for reclamation grants to uncertified States and Indian tribes must be used for subsidence insurance funds in grants.

[FR Doc. E8–13310 Filed 6–19–08; 8:45 am]

BILLING CODE 4310–05–P


Federal Register

**Friday,**
**June 20, 2008**

## Part III

# Department of Housing and Urban Development

**24 CFR Part 3286**
**Manufactured Home Installation Program; Final Rule**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 3286

**[Docket No. FR–4812–F–03]**

**RIN 2502–AH97**

## Manufactured Home Installation Program

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes a federal manufactured home installation program, as required by section 605(c)(2)(A) of the National Manufactured Housing Construction and Safety Standards Act of 1974. States that have their own installation programs that include the elements required by statute are permitted to administer, under their state installation programs, the new requirements established through this final rulemaking. The new elements required by statute to be integrated into an acceptable state manufactured home installation program are: The establishment of qualified installation standards; the licensing and training of installers; and the inspection of the installation of manufactured homes.

**DATES:** *Effective Date:* October 20, 2008.

**FOR FURTHER INFORMATION CONTACT:** William W. Matchneer III, Associate Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9164, Washington, DC 20410; telephone number 202–708–6401 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*Requirement for an Installation Program*

The National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426) (''the Act'') is intended, in part, to protect the quality, safety, durability, and affordability of manufactured homes, and was amended on December 27, 2000 (Manufactured Housing Improvement Act of 2000, Title VI, Pub. L. 106–659, 114 Stat. 2997). In order to accomplish those objectives, the Act requires HUD to, among other things, establish and implement a new manufactured home installation program for states that choose not to operate their own installation programs. Specifically, section 605 of the Act (42 U.S.C. 5404) calls for the establishment of an installation program that includes installation standards, the training and licensing of manufactured home installers, and inspection of the installation of manufactured homes. The model manufactured home installation standards (''the installation standards'') themselves can be found in a separate final rule, which was published on October 19, 2007 (72 FR 59338). Any state that wishes to operate its own installation program must contain state installation standards that afford residents of manufactured homes at least the same protection provided by the federal installation standards.

Although a state that wants to operate its own installation program is not required to be a State Administrative Agency (''SAA'') established pursuant to HUD's Manufactured Home Procedural and Enforcement Regulations (see 24 CFR part 3282), any state that submits a new state plan to become an SAA after the implementation of the Manufactured Home Installation Program must include a complying installation program as part of its plan. As a result, any state that becomes an SAA for the first time, or any state that becomes an SAA again after a lapse in its SAA status, will be required to administer its own compliant installation program.

*Proposed Rule*

On June 14, 2006, at 71 FR 34476, HUD published the Manufactured Home Installation Program proposed rule with a comment due date of August 14, 2006. There were a total of 35 commenters on the June 14, 2006, proposed rule. Twenty-seven of the commenters were from the manufactured home industry, including manufacturers, component suppliers, retailers, installers, trade associations, and community operators. Five commenters were from SAAs. The remaining commenters were a consumer group, the Manufactured Housing Consensus Committee (MHCC), and one member of the insurance industry.

HUD worked closely and participated in several meetings with the MHCC in order to obtain their input and suggestions. In response to comments from the public and input from the MHCC, HUD has made a few significant changes to the proposed rule.

### II. General Areas of Interest to Commenters

This section of the preamble discusses general areas of interest to commenters. One of the general recommendations most often made by the commenters was to codify the Manufactured Home Installation Program in the existing 24 CFR part 3282, rather than in the new part § 3286, in the belief that the installation program would thereby become ''preemptive'' of state and local installation requirements in states where HUD administers the installation program.

*Preemption*

Commenters requested that the installation program and installation standards be made preemptive of state and local requirements in states where HUD administers the installation program. However, HUD has concluded that a plain reading of sections 604(d) and 605 of the Act indicates that Congress did not intend for the installation program or the installation standards to be preemptive of more stringent state or local government requirements. This conclusion is strengthened by the legislative history of the Act. During his section-by-section comments on the floor of the House when the Act was being debated, then House Financial Services Committee Chairman Jim Leach stated that ''the bill would reinforce the proposition that installation standards and regulations remain under the exclusive authority of each state.'' (See Dec. 5, 2000, 146 Cong. Rec. H11960–01.) In ''Additional Views'' that were included in the House Report on the bill, then Ranking Committee Member John LaFalce noted that ''for the first time, we will be setting a national minimum installation standard * * *'' (H. Rpt. 106–553, pg. 182). In earlier floor remarks, Rep. LaFalce said, ''[s]tates that wish to have their own installation standards may continue to do so, as long as they provide protections comparable to the model standards.'' (Oct. 24, 2000, 146 Cong. Rec. H10685). HUD, therefore, concludes that Congress has permitted state governments to implement installation standards that are more stringent than the federal installation standards, provided that those state standards otherwise offer protection that equals or exceeds the minimum protection established by the installation standards.

*Codification in Part 3286 of 24 CFR*

Commenters, including the MHCC, continued to state that the Manufactured Home Installation Program should be codified under 24 CFR part 3282, Manufactured Home Procedural and Enforcement Regulations. Contrary to the views expressed by these commenters,

preemption authority can come only from Congress, and no decision that HUD makes regarding the codification of the Manufactured Home Installation Program could increase or diminish that authority. As indicated above, HUD has concluded that Congress did not intend to extend preemption authority to the installation of manufactured homes.

In any event, HUD has chosen, as a matter of administrative necessity, to codify the Manufactured Home Installation Program in a new 24 CFR part 3286 in order to maintain the clear distinctions that the Act makes between installation and construction. The regulatory structure that Congress has given HUD for enforcement of the Manufactured Home Installation Program is entirely different from the enforcement authority it previously gave HUD for the Federal Manufactured Home Procedural and Enforcement Regulations. As HUD reads sections 613 (42 U.S.C. 5412) and 615 (42 U.S.C. 5414) of the Act, the principal sections requiring notification and correction of defects, these sections do not apply to the installation of manufactured homes. As HUD reads the Act, the primary enforcement authority for the installation of manufactured homes, implemented through sections 610 and 611 (42 U.S.C. 5409 and 5410, respectively), is section 605 (42 U.S.C. 5404) itself, which not only provides more limited authority for the installation of manufactured homes, but adds new requirements regarding the licensing and training of installers.

Given these fundamental differences between the installation and construction and safety programs, publication of the Manufactured Home Installation Program in a new 24 CFR part 3286 will best allow HUD to maintain the regulatory separation necessary to administer two such different programs.

Commenters stated that the purpose of the Manufactured Home Installation Program should be to establish HUD's default installation program for those states that do not meet the required elements of the Act through state law. The rule should not be used to create a prescriptive base-line standard for each state-based installation program. In order to avoid confusion on this issue, the final rule sets out, in discrete subparts: (1) Manufactured home installation requirements that are applicable in all states (subpart A) and to all manufacturers; (2) requirements that are applicable in only those states in which HUD is administering the installation program (subparts B through H); and (3) requirements for states that wish to apply to administer their own installation programs in lieu of the HUD program (subpart I). Further, to make the applicable requirements more readily identifiable, the final rule separately organizes the requirements that apply to the retailers, distributors, installers, installation trainers, and installation inspectors in states where HUD administers the installation program.

*Installation in Accordance With the Installation Standards*

The MHCC was particularly concerned that the Manufactured Home Installation Program proposed rule required compliance with the installation standards, and not with the installation design and instructions provided by the manufacturer. HUD agreed with the MHCC that it would be better for the consumer to require compliance with the manufacturer's installation design and instructions, since such designs and instructions may differ from the installation standards by providing requirements that not only exceed the installation standards, but are also specific to the installation requirements of the particular home being installed.

The final rule of the installation program requires that the manufactured home be installed in accordance with:

(1) An installation design and instructions that have been provided by the manufacturer and approved by the Secretary directly or through review by the Design Approval Primary Inspection Agency (DAPIA); or

(2) An installation design and instructions that have been prepared and certified by a professional engineer or registered architect and have been approved by the manufacturer and the DAPIA as providing a level of protection for residents of the home that equals or exceeds the protection provided by the federal installation standards in part 3285 of this chapter.

**III. Particular Areas of Interest to Commenters**

This section of the preamble discusses specific, section-by-section areas of interest to commenters. In response to the comments and the MHCC's input, HUD has made a few significant changes to the proposed rule.

Section 3286.2(d)(3) Applicability. Many commenters suggested expanding the Manufactured Home Installation Program to cover secondary installations of manufactured homes in addition to initial installations. It is HUD's position that Congress intended the installation program to be applicable only to the initial installation of new manufactured homes, as indicated by references in section 623(g) of the Act to the date of installation and by the definition of ''purchaser'' as the first purchaser in section 603 of the Act. A very small percentage of manufactured homes are ever relocated after initial siting and placement of the homes. The Manufactured Home Procedural and Enforcement Regulations encourage States to establish procedures for the inspection of used manufactured homes and for monitoring of the installation of manufactured homes within each State (§ 3282.303), indicating the intent of Congress to place the supervision of reinstallments in the hands of the States.

The final rule clarifies that the installation program does not prevent State and local governments from regulating subsequent installations of manufactured homes. State standards for initial installation must meet or exceed HUD's minimum installation standards, while state standards for secondary installations do not have to adhere to the minimum HUD standards. HUD concludes that any subsequent installation of a manufactured home resides with State authority.

Section 3286.103 DAPIA-approved installation instructions. HUD agrees with the commenters who stated that the retailer must provide the purchaser with a copy of the DAPIA-approved installation instruction manual for each home in states where HUD administers the installation program. However, the retailer should not be required to provide an installation design and instructions if the retailer has not agreed to provide any set up in connection with the sale of the home and the installation requires a design that is different than that provided by the manufacturer's installation manual for the home. HUD agrees that the retailer or manufacturer should provide the installation design and instructions for installations that require designs that differ from those provided by the manufacturer's instruction manual when the retailer or manufacturer agrees to provide any set up in connection with the sale of the home. The proposed rule placed the entire burden of providing the installation instructions upon the retailer.

Accordingly, the final rule has been revised to require the retailer to provide the purchaser with a copy of the DAPIA-approved installation instructions for each manufactured home, and to require the retailer or manufacturer to provide to the installer the installation design and instructions for installations that require designs that differ from those provided by the manufacturer when the retailer or manufacturer agrees to

provide any set up in connection with the sale of the home. Although either the retailer or the manufacturer now has the responsibility to provide instructions to the installer, rather than only the retailer, the overall burden associated with the requirement to provide instructions has not changed.

The final rule does not require the retailer or manufacturer to provide installation instructions to the installer if the retailer or manufacturer has not agreed to provide any set up in connection with the sale of the home, since the installer performing the installation may not be known by the retailer or manufacturer.

Section 3286.109 Inspection requirements—generally. HUD agrees with commenters who stated that the requirements in the proposed rule may delay the completion of sale. The original wording extended the completion of sale date to the date that the home was installed. This may have had an adverse effect on retailers when they do not provide set up in connection with the sale of the home, since the retailer's duties would not end until an independent third party completed its work. HUD has made appropriate revisions to this section, in order to clarify when a sale is complete.

Section 3286.405 Site suitability. HUD agrees with the many commenters who stated that it should be the installer's responsibility to verify site suitability for the installation of a home. Subpart C of the Model Installation Standards includes many site preparation requirements that must be performed during the installation of the manufactured home. Accordingly, the licensed installer is responsible for determining the suitability of the site with regard to the requirements in the Model Installation Standards. The requirements are not the responsibility of the retailer or manufacturer.

Section 3286.803(b) Minimum elements. A majority of commenters stated that the provision for a state to prove it has adequate funding in order to be approved to run its own installation program should be removed and is not a requirement of the Act. HUD, however, believes that the requirement is appropriate. The final rule should also include an additional item that would allow HUD to approve state installation programs, provided the state demonstrates an alternative means for achieving the end goal of improved manufactured housing.

## IV. Section-by-Section Revisions—Changes to Proposed Rule

In response to the public comments and subsequent reevaluation by HUD, the following is a summary, by subpart, of the section-by-section revisions being made to the Manufactured Home Installation Program proposed rule.

*Subpart A—Generally Applicable Provisions and Requirements*

A new paragraph (b), ''Implementation,'' is added to § 3286.1 to provide for **Federal Register** publication of an implementation schedule for the various components of the installation program. HUD will publish a separate notice setting forth a timetable for implementation of the elements of the program, for example, the program's installer training and licensing requirements, to provide an orderly transition to a fully operational installation program.

Paragraph (d)(2) of § 3286.2 makes clear that states that administer their own installation program may regulate subsequent installations of manufactured homes. Further, new paragraph (d)(4) was added to § 3286.2 recognizing that HUD does not have the authority to regulate the installation of manufactured homes on Indian reservations.

In response to comments, certain definitions, including definitions for *manufactured housing installation instructions and installation,* have either been added or modified in § 3286.3 of the final rule in order to provide clarity.

Section 3286.5 was modified to provide an overview of the HUD-administered installation program and the state-administered installation programs. The installer requirements are being moved to Subpart C, since these requirements are applicable only in states where HUD administers the installation program. The manufacturer must also include instructions for protecting the interior of the manufactured home or sections of homes from damage, pending the first siting of the home for occupancy. The instructions must be adequate to ensure that the temporary supports and weatherization used will be sufficient to prevent the home and its transportable sections from falling out of conformance with the Manufactured Housing Construction and Safety Standards (MHCSS) in part 3280 of this chapter, if the home or its sections is either:

(i) Stored at any location for more than 30 days; or

(ii) In the possession of any entity for more than 30 days.

Paragraph (b) of § 3286.7 was revised to require the retailer to provide the purchaser or lessee with a consumer disclosure prior to execution of the sales contract to purchase, or of the lease agreement to lease, a manufactured home. This disclosure must be in a document separate from the sales or lease agreement.

Section 3286.9 was revised to ensure that the manufacturer's reporting requirements in the installation program are consistent with the reporting requirements in § 3282.552. Form HUD–302 will be used to collect the information from the manufacturer.

The final rule has been revised to require retailers to update the tracking and installation information only for homes installed in states where HUD administers the installation program; therefore, § 3286.13 is being moved to § 3286.113.

*Subpart B—Certification of Installation in HUD-Administered States*

A new § 3286.102, that details the information that the manufacturer must provide to retailers or distributors, was added. It also requires the manufacturer to include a notice in the installation instructions that the home must comply with installation designs and instructions that are approved by either the Secretary of HUD or by the manufacturer's DAPIA.

Section 3286.103(a) was revised to require the retailer to provide a copy of the manufacturer's DAPIA-approved installation instructions for each home. The retailer or manufacturer must also provide an installation design and instructions if: (1) the installation requires a design that is different from that provided by the manufacturer, and (2) the retailer or manufacturer agrees to provide any set up in connection with the sale of the home.

A new paragraph (b) has been added to § 3286.105 that requires the retailer or manufacturer to ensure that the installer is licensed if the retailer or manufacturer agrees to provide any set up in connection with the sale or lease of the home.

Section 3286.107 has been revised to require installers to comply with the manufacturer's installation design, or with alternative designs and instructions that were prepared by a professional engineer or registered architect, as long as the alternative designs and instructions have been reviewed and approved by the manufacturer and its DAPIA.

A new paragraph (a)(4) has been added to § 3286.107 that clearly sets out that any installation defect caused by the installer's work is the joint responsibility of the installer and of the retailer or manufacturer that retained the installer. A new § 3286.107(a)(5) also makes them jointly and severally liable for the correction of any failures

to comply with the installation standards.

Section 3286.109 was revised to require the installer to certify, and the inspector to verify, that the home has been installed in accordance with the requirements of § 3286.107(a) before the home can be occupied.

Section 3286.113 was revised to delete references to the sale of the home and instead require retailers to provide tracking information and installation information only for homes installed in states where HUD administers the installation program. The proposed rule required the tracking information to be provided to HUD for all homes. The option of the Internet-based tracking system established by HUD was deleted. Retailer record retention requirements were shortened from 5 to 3 years.

Section 3286.115 of the proposed rule was revised to include the date that the installer certified that all required inspections were completed as part of the date of installation.

Section 3286.117 was modified to redefine the completion of sale date.

*Subpart C—Installer Licensing in HUD-Administered States*

Section 3286.205(d) was revised to require an applicant for an installation license to obtain, when available in the state of installation, a surety bond or insurance that will cover the cost of repairing all damage to the home and its supports caused by the installer during the installation. The value of such bond or insurance must cover the costs of repair of any incidents that render the home defective, up to and including replacement of the home. The proposed rule required the installer to maintain general liability insurance in the amount of at least $1 million. This change will link the installer's costs more closely to the number of homes installed, rather than imposing a level cost regardless of the number of homes installed. Smaller installation operations that have a lesser volume of installations will benefit from this requirement.

*Subpart D—Training of Installers in HUD-Administered States*

Section 3286.303(d) was revised to shorten the period during which trainers and continuing education providers must retain records from 5 to 3 years.

*Subpart E—Installer Responsibilities of Installation in HUD-Administered States*

Section 3286.405(b) was revised to require the installer to identify the reasons why a site is unsuitable for installation when the installer has found that a site is unsuitable. The installer is also required to notify HUD of the site's unsuitability, in addition to notifying the retailer when it has made such a finding.

Two new paragraphs, (c) and (d), were added to § 3286.405. These paragraphs make clear that if the installer notices and recognizes any failures to comply with the construction and safety standards in part 3280 of this chapter prior to beginning any installation work, during the course of the installation work, or after the installation work is complete, the installer must notify the manufacturer and the retailer of each failure to comply. Additionally, the retailer must provide a copy of the notification received in paragraphs (b) (site suitability) and (c) (construction and safety failures) of this section to any subsequent installer.

Section 3286.409(d) was removed.

Section 3286.411(c) was modified and moved to § 3286.113.

Section 3286.413(b) was revised to shorten the period during which installers must retain records from the 5 years set out in the Manufactured Home Installation Program proposed rule to 3 years.

*Subpart F—Inspection of Installation in HUD-Administered States*

A new paragraph (c) was added to § 3286.503 requiring the installer to provide installation instructions to the inspector.

Section 3286.507(a) was revised to clarify that the installation verification provided by the inspector must be in writing.

International Code Council-certified inspectors were added to the list of qualified inspectors in § 3286.511(a).

*Subpart G—Retailer Responsibilities in HUD-Administered States*

A new paragraph (c) was added to § 3286.603 that requires the retailer or manufacturer to verify that the installer is licensed when the retailer or manufacturer agrees to provide any set up in connection with the sale or lease of the home.

*Subpart H—Oversight and Enforcement in HUD-Administered States*

The sections in subpart H are the same as in the proposed rule. They are not revised by this final rule.

*Subpart I—State Programs*

Sections 3286.801 and 3286.803(a) were revised to clarify that states that administer their own installation programs may do so either as part of their approved state plan or under Subpart I of the Manufactured Home Installation Program rule.

The time frames in § 3286.805(c) were revised to 90 days based on a comment from the MHCC that the time frames be consistent and that 90 days is a reasonable time frame for both actions.

Section 3286.807 was revised to require states to submit a new State Installation Program Certification form to the Secretary for review every 5 years after the state's most recent certification as a qualified installation program.

## V. Findings and Certifications

*Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the order). The docket file is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing-or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

*Paperwork Reduction*

The information collection requirements contained in this final rule have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2502–0253. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandates on any state, local, or tribal government or the private sector

within the meaning of the Unfunded Mandates Reform Act of 1995.

*Environmental Review*

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) and remains applicable to this final rule. The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing-or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

HUD is required by statute to establish an installation program through the National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act) (42 U.S.C. 5401–5426). However, in accordance with the Act and as set forth in this proposed rule, this Manufactured Home Installation Program is not preemptive. Therefore, HUD has determined that the Model Installation Standards, if adopted, have no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 13132.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires agencies to consider the impact of their rules on small entities. Agencies must evaluate the impact of a rule on small entities and describe their efforts to minimize the adverse impacts.

As part of the proposed rule, HUD prepared an Initial Regulatory Flexibility Analysis (IRFA) that evaluated the potential economic impact on the small entities the regulations would affect, including: manufacturers, retailers, installers, and trainers. Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 603), HUD prepared a Final Regulatory Flexibility Analysis (FRFA), which follows in its entirety.

**Manufactured Home Installation Program Final Regulatory Flexibility Analysis: Reason That the Action Is Being Considered**

On December 27, 2000, the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426) was amended by the Manufactured Housing Improvement Act of 2000, which, among other things, requires the Secretary to establish an installation program for the enforcement of the Model Manufactured Home Installation Standards in each state that does not have an installation program established by state law and approved by the Department.

*Objective of the Final Rule*

The objective of the final rule is to establish the Manufactured Home Installation Program in each state that does not have an installation program established by state law and establish the requirements that must be met by a state to implement and administer its own installation program. The Manufactured Home Installation Program includes:

- Systems for tracking and certifying manufactured home installations;
- Licensing requirements for individuals and entities to qualify to install a manufactured home, which include required experience, training, testing, and proof of liability insurance;
- Requirements for individuals or entities for providing the required training;
- Responsibilities of the installer who is accountable for the installation of the manufactured home;
- Inspection requirements that must be performed by a qualified inspector;
- Responsibilities for retailers of manufactured homes in states that do not have qualifying installation programs;
- Enforcement mechanisms to ensure the proper installation of manufactured homes; and
- Requirements that must be met by a state to implement and administer its own installation program in such a way that the state would not be covered by the HUD-administered installation program.

*Summary of Significant Issues Raised by Public Comment*

There were a total of 35 commenters on the June 14, 2006, proposed rule. Twenty-seven of the commenters were from the manufactured home industry, including manufacturers, component suppliers, retailers, installers, trade associations, and community operators. Five commenters were from State Administrative Agencies (SAAs). The remaining commenters included one member of the insurance industry, a consumer group, and the Manufactured Housing Consensus Committee (MHCC).

None of the comments received addressed the IRFA. However, the Department did receive two general comments regarding the Regulatory Flexibility Analysis summary in the preamble of the proposed rule. The comments were:

- ''While HUD's proposed rule does include a cost-impact estimate under the Regulatory Flexibility Act—showing a projected cost increase of $974 for a single-section home and $1,023 for a double-section home in HUD-administered states—there is no evidence that HUD has considered the affordability of the proposed installation program as a function of the affordable housing mandates.''
- ''Overall cost impact for installation is a large concern for the industry. It is stated that a single-wide will increase approximately $974 and multi-section will increase approximately $1,023 in states where HUD would administer the installation program. In some parts of the U.S. this can make the purchase of a manufactured home unaffordable.''

In developing the proposed rule, the Department developed an installation program that implemented the statutory requirements outlined in the Act, while balancing protection for the consumer with the economic impact on small entities. Appendix A of the IRFA indicates that the five regulatory requirements in the proposed rule with the largest individual economic impact account for approximately 86 percent of total estimated cost increase of a manufactured home. The information in Table 1 summarizes these findings and a discussion follows for each summary:

TABLE 1

| Summary of regulatory requirement | Cost impact per single | Cost impact per multi |
|---|---|---|
| Regulation establishing liability insurance for installers in states without a qualifying installation program | $302.52 | $302.52 |
| Regulation requiring the inspection of every manufactured home installation in states without a qualifying installation program | 300.00 | 350.00 |
| Regulation establishing initial training for installers in states without a qualifying installation program | 102.86 | 102.86 |
| Regulation establishing continuing education for installers in states without a qualifying installation program | 71.09 | 71.09 |
| Regulation establishing recordkeeping requirements for installers in states without a qualifying installation program. Requires that all information must be kept for 5 years | 62.02 | 62.02 |

1. Liability Insurance—Section 3286.205(d) of the proposed rule required an applicant for an installation license to provide evidence of general liability insurance in the amount of at least $1 million. The Department received comments suggesting eliminating or reducing the limits on the provision. Additional commenters suggested including a surety or insurance bond to protect the consumers from faulty installation designs or incomplete work.

The Department agrees with the commenters that surety or insurance bonds would provide better protection to the consumer than the liability insurance requirement. Therefore, the Department replaced the liability insurance requirement in the proposed rule with a surety bond/insurance requirement that is sufficient to cover the cost of repairing all damage to the home and its supports caused by the installer during the installation of the home. (*See* § 3286.205(d) in the final rule). This change also reduced the burden on small entities.

2. Inspections—Section 3286.505 of the proposed rule required each manufactured home installed in states where HUD administers the installation program to be inspected. Section 605 of the Act (42 U.S.C. 5404) calls for the establishment of an installation program that includes inspection of the installation of manufactured homes. Many commenters suggested inspecting less than 100 percent of all installations. The Department does not have any evidence that suggests such an inspection program would provide sufficient consumer protection; therefore, the final rule remains unchanged.

3. Installer Training—Section 3286.205(b)(1) of the proposed rule required an applicant for an installation license to complete 12 hours of training in states where HUD administers the installation program. Section 605 of the Act (42 U.S.C. 5404) calls for the establishment of an installation program that includes installer training. The Department did not receive any comments regarding the initial training of installers; therefore, the final rule remains unchanged.

4. Installer Continuing Education—Section 3286.205(b)(2) of the proposed rule required the licensed installer in states where HUD administers the installation program to complete 8 hours of continuing education during the 3-year license period to qualify for renewal of an installation license. The Department did not receive any comments regarding the continuing education requirement for installers; therefore, the final rule remains unchanged.

5. Installer Records—Section 3286.413 of the proposed rule required that installers maintain the required records for 5 years after the installer certifies completion of the home in states where HUD administers the installation program. Fifteen commenters suggested reducing the record retention requirement to 3 years. The Department agreed and changed the record retention requirement to 3 years in the final rule.

**Description and Estimated Number of Small Entities Regulated**

The final rule will apply to any business that manufactures, sells or leases, or installs manufactured homes. The rule also contains requirements for persons to qualify to provide the training required for installers. This rule also establishes requirements that must be met by a state to implement and administer its own installation program in such a way that the state would not be covered by the HUD-administered installation program.

The rule has differing requirements for the regulated entities depending on whether the home is being installed in a state with a qualified installation program or a state covered by the HUD-administered program.

The information presented in Table 2 was gathered from data collected by the Office of Manufactured Housing Programs based on the available data for 2006. The number of states expected to administer an installation program is estimated based on close correspondence with state representatives regarding the state's intentions.

TABLE 2.—REGULATED ENTITIES AND SMALL ENTITIES

| North American Industrial Classification Schedule | Description of primary entity | Number of regulated entities | Small Business Administration size standard | Number of small entities | Percentage of regulated entities |
|---|---|---|---|---|---|
| **All States—The requirements in Subpart A are applicable in all states** | | | | | |
| 321991 | Manufacturers | 222 | 500 employees | 198 | 89 |
| 453930 | Retailers | 5151 | 500 employees | 5151 | 100 |
| **States Without Installation Programs—The requirements in Subparts B through H are applicable in these states** | | | | | |
| 453930 | Retailers | 340 | 500 employees | 340 | 100 |
| 238990 | Installers | 1021 | $12 million | 1021 | 100 |
| 611519 | Trainers | 50 | $6 million | 50 | 100 |

TABLE 2.—REGULATED ENTITIES AND SMALL ENTITIES—Continued

| North American Industrial Classification Schedule | Description of primary entity | Number of regulated entities | Small Business Administration size standard | Number of small entities | Percentage of regulated entities |
|---|---|---|---|---|---|
| **States With Installation Programs—The requirements in Subpart I are applicable in these states** | | | | | |
| | States | 35 | 50,000 population | 0 | 0 |

Description of the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The final rule contains information collection requirements, installer licensing requirements, installer surety bond/insurance requirements, installation inspection requirements, installer trainer registration, and certification of states administering an installation program. Appendix A provides a detailed cost analysis of each section of the final rule.

Identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the final rule.

The Department is unaware of any conflicting federal rules. The final rule requires similar information to that required in 24 CFR 3282.552, which requires manufacturers to submit monthly label reports to their Production Inspection Primary Inspection Agency (IPIA). Section 3282.553 (24 CFR 3282.553) requires each IPIA to provide the information in the monthly label reports to the Department. This information is currently provided on OMB-approved form HUD–302. Section 3286.9 in the final rule requires the manufacturer to provide similar information to the Department for the purposes of installation.

To eliminate the possible duplication of reporting requirements, the Department revised form HUD–302 such that the information required in 24 CFR 3282.552 and 3286.9 may be provided in a single form completed by the manufacturer. This revised form is part of the Department's Paperwork Reduction Act submission.

Description of any significant alternatives that accomplish the stated objectives of applicable statutes that minimize any significant economic impact of the proposed rule on small entities, including alternatives considered.

The section *Summary of Significant Issues Raised by Public Comment* discusses the five regulatory requirements in the proposed and final rules that have the greatest economic impact on small entities. Additional alternatives were also considered during the development of the final rule as a result of the public comment.

*Alternative 1.* Section 3286.5(b)(2) requires the manufacturer to include instructions for supporting the manufactured home temporarily, pending the first siting of the home for occupancy.

Alternative Considered—The Department considered eliminating this requirement as the result of public comment; however, the importance of assuring that the temporary supports will be sufficient to prevent the home and its transportable sections from being brought out of conformance with the Construction and Safety Standards in 24 CFR part 3280 prior to sale is a necessary consumer protection considering the small costs associated with this section. Furthermore, the Department received additional comments stating the provisions are beneficial and should remain in the final rule.

*Alternative 2.* Section 3286.7(b) requires the retailer to provide the purchaser or lessee with a consumer disclosure prior to the purchase or lease of a manufactured home.

Alternative Considered—The Department considered eliminating this requirement as a result of public comment; however, the majority of public comment was in favor of the disclosure because of the importance of consumer protection during the purchase or lease of a manufactured home. This consumer protection justifies the small costs associated with this section.

*Alternative 3.* Section 3286.9(d) of the proposed rule required the manufacturer to include installation instructions in each home regardless of state.

Alternative Considered—A single commenter suggested requiring the manufacturer to provide installation instructions only in homes installed in states where HUD administers the installation program. Section 605 of the Act (42 U.S.C. 5404) requires the manufacturer to provide the design and instructions for the installation of each manufactured home, that have been approved by a design approval inspection agency; therefore, the requirement is consistent with the statutory requirement. (See § 3286.9(b) of the final rule.)

*Alternative 4.* Section 3286.13(a) of the proposed rule required the retailer or distributor to maintain for 5 years a copy of the sales or lease record for all homes sold or leased regardless of state.

Alternative Considered—The Department revised the final rule requiring the retailer or distributor to maintain a copy of the sales or lease record for homes sold or leased in states where HUD administers the installation program for 3 years (See section 3286.113(e) of the final rule). This reduces the recordkeeping burden on retailers and distributors.

*Alternative 5.* Section 3286.103(a) of the proposed rule required retailers and distributors to provide the purchaser with a copy of either:

''(1) The manufacturer's DAPIA-approved installation instructions for the home; or

(2) If the installation requires a design that is different from that provided by the manufacturer, an installation design and instructions that do not take the home out of compliance with the construction and safety standards in part 3280 of this chapter. * * *''

Many commenters agreed that the retailer should provide the purchaser with a copy of the DAPIA-approved installation instructions for every home in states where HUD administers the installation program. However, many commenters said the retailer should not be required to provide an installation design and instructions that differ from the DAPIA-approved installation instruction if the retailer has not agreed to provide any setup in connection with the sale of the home and the installation requires a design that is different from that provided by the manufacturer for the home. HUD agrees that the retailer or manufacturer should provide the installation design and instructions only for installations that require designs that differ from those provided by the manufacturer when the retailer or

manufacturer agrees to provide any setup in connection with the sale of the home. The proposed rule placed the entire burden of providing the installation instructions on the retailer.

Accordingly, the final rule has been revised to require: (1) The retailer to provide the purchaser with a copy of the DAPIA-approved installation instructions for each manufactured home, and (2) the retailer or manufacturer to provide to the installer the installation design and instructions for installations that require designs that differ from those provided by the manufacturer, when the retailer or manufacturer agrees to provide any setup in connection with the sale of the home (See § 3286.103(b) of the final rule).

*Alternative 6.* Section 3286.211(a) of the proposed rule set an expiration date of 3 years for installation licenses issued in states where HUD administers the installation program.

A single commenter suggested extending the term of the license to 5 years to reduce the burden on installers. Another commenter suggested reducing the licensing term to one year to ensure installers are knowledgeable of new installation requirements. The term of the license remains 3 years in the final rule to balance the burden on installers and HUD, while ensuring installers are kept up to date on updates to the Model Installation Standards.

*Alternative 7.* Record Retention Requirements—The proposed rule requires that installers, retailers, and trainers maintain the required records for 5 years in states where HUD administers the installation program.

Alternative Considered—The Department agreed with the 15 commenters that suggested reducing the record retention requirement to 3 years. The Department agreed and changed the record retention requirement to 3 years in the final rule, thereby reducing record retention burden on small entities.

APPENDIX A.—24 CFR PART 3286: MANUFACTURED HOUSING INSTALLATION PROGRAM COST IMPACT ANALYSIS MATRIX

| Section | Regulated party | Number of parties affected | Number of homes | Cost impact per single-section home | Cost impact per multi-section home | Annual cost impact per regulated party | Total annual cost impact | Cost impact notes |
|---|---|---|---|---|---|---|---|---|
| § 3286.1 | | | | | | | | This section sets forth the purpose of Subpart A. The requirements in Subpart A apply to all manufactured homes regardless of the state of installation. There is no cost associated with this section. |
| § 3286.2 | | | | | | | | This section sets forth the applicability of all subparts. There is no cost associated with this section. |
| § 3286.3 | | | | | | | | This section sets forth terms and definitions in this part. There is no cost associated with this section. |
| § 3286.5 | Manufacturer | 222 | 135,000 | $0.87 | $0.87 | $527.03 | $117,000 | This section provides for an overview of the installation program including the HUD installation program, state installation programs, and manufacturer and retailer requirements. There is no associated cost with this section other than in § 3286.5(c)(2). Section 3286.5(c)(2) requires the manufacturer to include instructions for supporting the manufactured home temporarily and protecting the interior from damage, pending the first installation of the home for occupancy. The instructions must be adequate to assure that the temporary supports used will be sufficient to prevent the home and its transportable sections from being brought out of conformance with the construction and safety standards or its sections if stored on such supports for more than 30 days. This would include costs for third-party design review and approval (4 hours of DAPIA review and approval labor). The installation instructions themselves are already required under 24 CFR 3280. However, this review cost is a one-time annualized total cost averaged on a per-home basis. The Department estimates 20 hours to review and revise the instructions at $75 per hour for 78 manuals. This cost is averaged for 135,000 homes and the 78 manuals. (20*75*78)/135,000=$0.867/home. |
| § 3286.7(a) | Manufacturer | 222 | 135,000 | 2.55 | 2.55 | 1,551.89 | 344,520 | Requires the manufacturer to put a notice in the consumer manual for reinstalled homes. There will be a cost to the manufacturer for this notice. This notice must be provided for ALL homes. The cost to the manufacturer would include the one time cost of developing the disclosure (one hour at $75 per hour per manual), the initial placement in the consumer manual (one hour at $15 per hour per manual), and the continued placement of the disclosure in the consumer manual (10 minutes at $15 per hour). This cost is averaged for 135,000 homes.{(1*75*78)+(1*15*78)+(0.1667*15*135,000)}/135,000=$2.55/home. |
| § 3286.7(b) | Retailer | 5151 | 135,000 | 5.36 | 5.36 | 140.52 | 723,825 | Requires the retailer to provide the purchaser or lessee with a consumer disclosure. The requirements of this disclosure are also provided for in this section. This notice must be provided for all homes. There will be a cost to the retailer associated with this disclosure. The cost to the retailer would include the one-time cost of developing the disclosure (one hour at $75 per hour) and providing the disclosure to the consumer before the sale of each home (10 minutes at $15 per hour). This cost is averaged for 135,000 homes. {(1*75*5151)+(0.1667*15*135,000)}/135,000=$5.36/home. |

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|---|---|---|---|---|---|---|---|---|
| § 3286.9(a) ..... | Manufacturer ... | 222 | 135,000 | 2.50 | 2.50 | 1,520.27 | 337,500 | This section requires manufacturers to provide the initial tracking information about each home to HUD. This must be done for all homes regardless of state. Much of this information is currently being provided by manufacturers via form HUD–302. The form HUD–302 will be revised to include the anticipated ship date. There is a cost associated to the manufacturer for providing this information. The cost to the manufacturer will be the time required to provide this additional information to HUD, estimated at 10 minutes per home at $15 per hour. This cost is averaged for 135,000 homes. (0.1667x15*135,000)/135,000=$2.50/home. |
| § 3286.9(b) ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | This section requires manufacturers to provide a copy of the DAPIA-approved installation instructions with the home. The costs related to the revisions to the manufacturer's installation instructions have been accounted for in the Model Manufactured Home Installation Standards rule; therefore, the cost is not considered here. |
| § 3286.11 ..... | Manufacturer, Retailer, Installer. | 20,827 | 135,000 | 40.00 | 40.00 | 259.28 | 5,400,000 | This section deals with the temporary storage of units. There is a cost associated with the provision requiring the temporary installation instructions. This cost was accounted for in § 3286.5(c) above. There is a cost to the manufacturer, retailer, or installer associated with the temporary support of the home and protecting the interior of the home from damage. The cost is estimated at one additional hour for the support and protection of the home (one hour at $40 per hour). The estimate includes the extra time for supporting each home (135,000). (one hour*40*135,000)=$5,400,000 or $40/home. |
| § 3286.13 ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | This section provides that any provision of a contract or agreement entered into by a manufactured home purchaser that seeks to waive any recourse to either the HUD installation program or a state-qualifying installation program is void. This section does not have an associated cost impact. |
| § 3286.15 ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | This section states that the Secretary will seek input from the MHCC when revising the installation program regulations in this part 3286, by providing the MHCC an opportunity to comment on any revision. This section does not have any associated cost impact. |
| § 3286.101 ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | This section provides for the purpose of Subpart B to establish the systems for tracking and certifying a manufactured home installation that is to be completed in accordance with the HUD-administered installation program. There is no cost associated with this provision. |
| § 3286.102(a) ..... | Manufacturer ... | 222 | 6,750 | 2.50 | 2.50 | 76.01 | 16,875 | This section requires manufacturers to provide notice to the retailer that the tracking information is provided to HUD and that the retailer must update the information as required. This must be done for all homes where HUD administers the installation program. There is a cost associated with this requirement to the manufacturer. The cost to the manufacturer will be the time required to provide a copy of the required form HUD–302 to the retailer. This is estimated at 10 minutes per home at $15 per hour. This cost is averaged for 6,750 homes. (0.1667x15*6,750)/6,750=$2.50/home. |

APPENDIX A.—24 CFR PART 3286: MANUFACTURED HOUSING INSTALLATION PROGRAM COST IMPACT ANALYSIS MATRIX—Continued

| Section | Regulated party | Number of parties affected | Number of homes | Cost impact per single-section home | Cost impact per multi-section home | Annual cost impact per regulated party | Total annual cost impact | Cost impact notes |
|---|---|---|---|---|---|---|---|---|
| § 3286.102(b) ..... | Manufacturer ... | 222 | 6,750 | 3.54 | 3.54 | 107.64 | 23,895 | This section requires manufacturers to include in its installation instructions for the home a notice that the home is required to be installed in accordance with the two acceptable methods. This must be done for all homes where HUD administers the installation program. There is a cost associated with this requirement to the manufacturer. The cost to the manufacturer entity would include the one-time cost of developing the notice (one hour at $75 per hour), the initial placement in the installation manual (one hour at $15 per hour), and the continued placement of the notice in the installation manual (10 minutes at $15 per hour). This cost is averaged for 6,750 homes. {(1x75x78)+(1x15*78)+(0.1667*15*6,750)}/6,750=$3.54 home. |
| § 3286.103(a)(1) | Retailer ..... | 340 | 6,750 | $2.50 | 2.50 | 49.63 | 16,875 | For each manufactured home sold to a purchaser in a state in which HUD administers an installation program, the retailer must ensure that the purchaser is provided with a copy of the installation instructions. This will have an associated cost to the retailer in HUD states. Since the installation instructions are required to be provided by the manufacturer, with the home, the cost to the retailer will be the cost of providing the instructions to the consumer, estimated at 10 minutes per home at $15 per hour. This cost is averaged for 6,750 homes. 6,750(0.16667*15)=$16,875. |
| § 3286.103(a)(2) | Manufacturer ... | 222 | 6,750 | 37.50 | 37.50 | 1,140.20 | 253,125 | Requires that the manufacturer/DAPIA approve installation designs and instructions if the installation requires a design that is different from the installation instructions required and accounted for in the Model Manufactured Home Installation Standards. There is a cost associated with this requirement to the manufacturer. The cost to the manufacturer entity would include the cost of approving the site-specific designs estimated to occur in 20% of installations. The time is estimated at 2.5 hours at $75/hr. This cost is averaged for 6,750 homes. 0.2*6,750*2.5*75=$253,125. |
| § 3286.103(b) ..... | Retailer ..... | 340 | 6,750 | 2.13 | 2.13 | 42.19 | 14,345 | When the retailer agrees to provide any set up in connection with the sale of the home, the retailer must provide a copy of the same DAPIA-approved installation instructions or, as applicable, installation design and instructions to each company; or, in the case of a sole proprietor, the individual who performs set up or installation work on the home. This will have an associated cost to the retailer in HUD states. Since the installation instructions are required to be provided by the manufacturer with the home, the cost to the retailer will be the cost of providing the installation instructions, estimated at 10 minutes per home. Assume the retailer will provide set up in connection with the sale of the home in 85% of all sales as a conservative estimate. This cost is averaged for 6,750 homes. 0.85*0.16667*15*6,750=$14,345. |
| § 3286.105 ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | This section requires that the installer that installs a manufactured home in a state that does not have a qualifying installation program be certified or licensed in accordance with Subpart C. The cost associated with this is evaluated in Subpart C. |

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| § 3286.107 | | | | | | | | These sections set forth requirements that, at a minimum, the installation must comply with the manufacturer's installation instructions or the alternative design by a professional engineer or registered architect approved by the manufacturer and DAPIA. The cost associated with these requirements was evaluated as part of the final rule for the Model Manufactured Home Installation Standards and § 3286.103; therefore, is not included here. |
| § 3286.109 | | | | | | | | The installer or the retailer must arrange for the inspection of the installation work on any manufactured home. Before the sale of the home is considered complete, the installer must certify, and the inspector must verify, the home as having been installed in conformance with the requirements of § 3286.109(a). The requirements for installer certification are set and accounted for in § 3286.111. |
| § 3286.111(a)(1) | Installer | 1,021 | 6,750 | 20.00 | 20.00 | 132.22 | 135,000 | When the installation work is complete, an installer must certify that: The manufactured home has been installed in compliance with the manufacturer's installation instructions or with an installation design and instructions that have been certified by a professional engineer or registered architect as providing a level of protection for occupants of the home that equals or exceeds the protection provided by the installation standards in part 3285 of this chapter and the installation of the home has been inspected as required by part 3286 and an inspector has verified the installation as meeting the requirements of this part 3286. There will be costs associated with the provisions in this section to the installer for homes that are sited in states without a qualifying installation program. The cost to the installer would include the time to complete specific information required for each individual certification (30 minutes at $40 per hour). This cost is averaged for 6,750 homes. (0.5*40*6,750)=$135,000. |
| § 3286.111(a)(2) | Installer | 1,021 | 6,750 | 300.00 | 350.00 | 2,214.74 | 2,261,250 | This section provides that the installation of every manufactured home that is subject to the HUD-administered installation program is required to be inspected for each of the installation elements to ensure it complies with the requirements of part 3285 of this chapter. This provision will have an associated cost for the installations in that they are subject to the HUD-administered installation program. The cost associated with this provision will be borne by the installer. Many of the homes inspected by local jurisdictions may not incur an additional cost for the inspection beyond the existing permitting and inspection fees already borne by the installer. However, in areas without local jurisdictions, the installer will have to pay a qualified third party to inspect the installation. Estimating that each inspection for a single-wide unit and double-wide unit will take 3 hours and 3.5 hours, respectively, at a rate of $100 per hour for each installation in a HUD-administered installation state provides a conservative estimate of the cost. |
| § 3286.111(b) | Installer | 1,021 | 6,750 | 2.50 | 2.50 | 16.53 | 16,875 | The installer must provide a signed copy of its certification to the retailer that contracted with the purchaser for the sale of the home, and to the purchaser or other person with whom the installer contracted for the installation work. There will be costs associated with the provisions in this section to the installer for homes that are sited in states without a qualifying installation program. The cost to the retailer will be the cost of providing the information to HUD, estimated at 10 minutes per home at $15 per hour. This cost is averaged for 6,750 homes. 6,750*(0.16667*15)=$16,875. |

APPENDIX A.—24 CFR PART 3286: MANUFACTURED HOUSING INSTALLATION PROGRAM COST IMPACT ANALYSIS MATRIX—Continued

| Section | Regulated party | Number of parties affected | Number of homes | Cost impact per single-section home | Cost impact per multi-section home | Annual cost impact per regulated party | Total annual cost impact | Cost impact notes |
|---|---|---|---|---|---|---|---|---|
| § 3286.113(a) ..... | Retailer ..... | 340 | 6,750 | 3.75 | 3.75 | 74.45 | 25,312 | The retailer or distributor of the home must provide HUD with tracking information about the home within 30 days from the time that a purchaser or lessee enters into a contract to purchase or lease a manufactured home. This must be done for all homes in states in which HUD administers the installation program. There is a cost associated with this requirement to the retailer. The cost to the retailer will be the time required to provide this information to HUD estimated at 15 minutes per home at $15 per hour. This cost is averaged for 6,750 homes. (0.25x15*6,750)/6,750=$3.75/home. |
| § 3286.113(b) ..... | Retailer ..... | 340 | 6,750 | 3.75 | 3.75 | 74.45 | 25,312 | In addition to the information required to be provided by the retailer pursuant to § 3286.113(a), within 30 days from the date of installation, the retailer must provide HUD with additional information regarding the installation. There will be costs associated with the provisions in this section to the retailer for homes that are sited in states without a qualifying installation program. The cost to the retailer would include the time to complete specific information required for each individual concurrence (15 minutes at $15 per hour). This cost is averaged for 6,750 homes. (0.25*15*6,750)/6,750=3.75. |
| § 3286.113(c) ..... | Retailer ..... | ..... | ..... | ..... | ..... | ..... | ..... | This section provides for the method in which the information in §§ 3286.113(a) and (b) can be provided. There is no cost associated with this provision. |
| § 3286.113(d) ..... | Retailer ..... | 340 | 675 | 0.38 | 0.38 | 7.44 | 2,531 | This section provides for the correction of information in §§ 3286.113(a) and (b). There is a cost associated with this provision to the retailers in states where HUD administers the installation program. The cost to the retailer would include the time to correct the specific information. It is estimated that 10% of the information will have to be corrected taking 15 minutes for each response at $15 per hour. This cost is averaged for 6,750 homes in HUD states. 0.1*(0.25*15*6,750)=$2,531.25. The cost per home=$2,531.25/6,750=$0.38. |
| § 3286.113(e) ..... | Retailer ..... | 340 | 6,750 | 41.30 | 41.30 | 820.00 | 278,800 | This section requires that retailers must maintain sales records for 3 years. There is a cost associated with this provision to the retailers in states where HUD administers the installation program. The cost is estimated as the required time (filing and organization of files at 4 hours/month at $15 hour) and materials to keep such storage (file cabinets and computer disk space $100). 340($100+4*12*$15)=$278,800. |
| § 3286.115 ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | This section defines the date of installation. There is no cost associated with this provision. |
| § 3286.117 ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | This section defines the completion of sale. There is no cost associated with this provision. |
| § 3286.201 ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | This section outlines the purpose of Subpart C, which is to establish the requirements for a person to qualify to install a manufactured home in accordance with the HUD-administered installation program. No costs are associated with this section. |
| § 3286.203 ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | This section provides when a license is needed and when a license is not needed. No costs are associated with this provision. The cost of the license is addressed in § 3286.205 and § 3286.207. |

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| § 3286.205(a) ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | This section provides for the required experience for installers in states without a qualifying installation program. There is no cost associated with this provision. |
| § 3286.205(b)(1) | Installer ..... | 1,021 | 6,750 | 102.86 | 102.86 | 680.00 | 694,280 | This section provides for the required initial training for installers in states without a qualifying installation program. There is a cost associated with this provision for installers. The cost associated with this requirement is estimated as the cost for the 12-hour training class (approximately $200) and the missed wages (12*$40 per hour) while attending the class. This cost is averaged for 6,750 homes. (200+(12*40))*1,021=$694,280. |
| § 3286.205(b)(2) | Installer ..... | 1,021 | 6,750 | 71.09 | 71.09 | 470.00 | 479,870 | This section provides for the continuing education for installers in states without a qualifying installation program. There is a cost associated with this provision for installers. The cost associated with this requirement is estimated as the cost for the 8-hour continuing education classes (approximately $150) and the missed wages while attending the class (8*40 per hour). These provisions will not be applicable until 3 years after the implementation of the program, i.e., when the initial licenses begin to expire. This cost is averaged for 6,750 homes. (150+(8*40))*1,021=$479,870. |
| § 3286.205(c) ..... | Installer ..... | 1,021 | 6,750 | 9.66 | 9.66 | 130.00 | 132,730 | This section provides for the testing requirement for installers in states without a qualifying installation program. There is a cost associated with this provision for installers. The cost associated with this requirement is estimated as the cost for the testing fee (approximately $50) and the missed wages while attending the exam (2)*$40 per hour. This cost is averaged for 6,750 homes. (50+(2*40))*1,021=$132,730. |
| § 3286.205(d) ..... | Installer ..... | 1,021 | 6,750 | 226.89 | 226.89 | 1,500.00 | 1,531,500 | This section provides for the surety bond and insurance requirements for installers in states without a qualifying installation program. There is a cost associated with this provision for installers. The cost associated with the premium estimated from insurance company and surety bond companies will be approximately $1,500 per year. This cost is averaged for 6,750 homes. |
| § 3286.207(a) ..... | Installer ..... | 1,021 | 6,750 | 6.05 | 6.05 | 40.00 | 40,840 | This section requires the installer to complete an application for the license in states without a qualifying installation program. There will be costs associated with this provision to installers in states without a qualifying installation program. The cost associated with this requirement is estimated as the cost for the installer to read the instructions and complete the form. The cost is estimated at one hour at $40 per hour. |
| § 3286.207(b) ..... | Installer ..... | 1,021 | 6,750 | 6.05 | 6.05 | 40.00 | 40,840 | This section requires the installer to provide proof of experience in states without a qualifying installation program. There will be costs associated with this provision to installers in states without a qualifying installation program. The cost associated with this requirement is estimated as the cost for the installer to provide written verification of the experience. The cost is estimated at one hour at $40 per hour. |
| § 3286.207(c) ..... | Installer ..... | 1,021 | 6,750 | 1.51 | 1.51 | 10.00 | 10,210 | This section requires the installer to provide proof of training in states without a qualifying installation program. There will be costs associated with this provision to installers in states without a qualifying installation program. The cost associated with this requirement is estimated as the cost for the installer to copy the training certificate of completion. The cost is estimated at 0.25 hour at $40 per hour. |

APPENDIX A.—24 CFR PART 3286: MANUFACTURED HOUSING INSTALLATION PROGRAM COST IMPACT ANALYSIS MATRIX—Continued

| Section | Regulated party | Number of parties affected | Number of homes | Cost impact per single-section home | Cost impact per multi-section home | Annual cost impact per regulated party | Total annual cost impact | Cost impact notes |
|---|---|---|---|---|---|---|---|---|
| § 3286.207(d) ..... | Installer ..... | 1,021 | 6,750 | 1.51 | 1.51 | 10.00 | 10,210 | This section requires the installer to provide proof of the surety bond or insurance in states without a qualifying installation program. There will be costs associated with this provision to installers in states without a qualifying installation program. The cost associated with this requirement is estimated as the cost for the installer to copy the appropriate documents and provide proof of payment. The cost is estimated at 0.25 hour at $40 per hour. |
| § 3286.207(e) ..... | Installer ..... | 1,021 | 6,750 | 0.50 | 0.50 | 3.33 | 3,403 | This section requires the installer to provide a list of states in which they hold or have held installer licenses. There will be costs associated with this provision to installers in states without a qualifying installation program. The cost associated with this requirement is estimated as the cost for the installer to provide the list of states. It is expected that this will only apply to approximately half of the applicants. The cost is estimated at 5 minutes at $40 per hour. |
| § 3286.207(f)(1) | ..... | ..... | ..... | ..... | ..... | ..... | ..... | This section provides for the issuance or denial of an installation license. No cost is associated with this provision. |
| § 3286.207(f)(2) | Installer ..... | 1,021 | 6,750 | 0.09 | 0.09 | 0.59 | 600 | This section allows the applicant who is denied an installation license an opportunity for a presentation of views for the purpose of establishing the applicant's qualifications to obtain an installation license. There will be costs associated with this provision to installers in states without a qualifying installation program. The cost associated with this requirement is estimated as the cost for the installer to request the presentation of views. It is estimated that 2% of the applicants applying for an installation license will request such a presentation (approximately 20 installers). The cost is estimated at 45 minutes at $40 per hour for 20 applicants. (45/60*$40*20)/6,750=$0.09 per home. |
| § 3286.207(g) ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | This section does not allow transfer of licenses to other entities. No cost is associated with this provision. |
| § 3286.209 ..... | Installer ..... | 1,021 | 6,750 | 0.09 | 0.09 | 0.59 | 600 | This section provides for the oversight of licensed installers; the processes for denial, suspension, or revocation of an installation license; and the reinstatement of an installation license in states without a qualifying installation program. There are no costs associated with the provisions in this section other than paragraph (d) in this section. The cost associated with this requirement is estimated as the cost for the installer to apply for a new license. It is estimated that less than 1% of the applicants (10) will have their licenses denied, suspended, or revoked. The cost is estimated at 90 minutes at $40 per hour for 10 applicants. (90/60*$40*10)/6,750=$0.09 per home. |
| § 3286.211 ..... | Installer ..... | 1,021 | 6,750 | 6.05 | 6.05 | 40.00 | 40,840 | This section provides for expiration and the process for renewal of an installation license in states without a qualifying installation program. There are costs associated with the provisions in paragraph (b) in this section to installers. The cost associated with this requirement is estimated as the cost for the installer to read the instructions and complete the form. The cost is estimated at one hour at $40 per hour. |

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| § 3286.301 | | | | | | | | This section discusses the purpose of Subpart D. The purpose is to establish the requirements for a person to qualify to provide the training required under Subpart C of this part. This training is required for manufactured home installers who want to be licensed in accordance with the HUD-administered installation program. No costs are associated with this provision. |
| § 3286.303(a) | | | | | | | | This section requires that qualified trainers must adequately address the curriculum and instruction-time requirements established in Subparts C and D of this part. There is no cost associated with this provision. |
| § 3286.303(b) | Trainer | 50 | 6,750 | 12.30 | 12.30 | 1,660.00 | 83,000 | This section requires qualified trainers to maintain records of the times, locations, names of attendees at each session, and content of all courses offered. There is a cost associated with this provision to trainers in states without a qualifying installation program. The cost is estimated as the required time (filing and organization of files at 2 hours a week at $15 per hour) and materials to keep such storage (file cabinets and computer disk space $100). This cost will be passed on to installers through the cost of the training class, and it is conceivable that the installer will pass this cost to the consumer. |
| § 3286.303(c) | Trainer | 50 | 6,750 | 1.51 | 1.51 | 204.20 | 10,210 | This section requires qualified trainers to provide completion certificates to course attendees. There is a cost associated with this provision to trainers in states without a qualifying installation program. The cost is estimated at 10 minutes per certificate at $60 per hour. This cost will be passed on to installers through the cost of the training class, and it is conceivable that the installer will pass this cost to the consumer. |
| § 3286.303(d) | | | | | | | | This section requires qualified trainers to retain all records for 3 years. There is a cost associated with this provision to trainers in states without a qualifying installation program. The cost is estimated in § 3286.303(b) above. |
| § 3286.303(e) | | | | | | | | This section may allow qualified trainers to administer exams. Since this is not a requirement, there is no cost associated with this provision. |
| § 3286.305 | | | | | | | | This section provides for the installation trainer criteria, including experience and curriculum. There are no costs associated with the provisions in this section other than paragraph (c) of this section. Paragraph (c) requires registration to be considered a qualified trainer. An individual or other training entity must submit to HUD certification that training provided will meet the requirements in §§ 3286.308 and 3286.309. The cost associated with this requirement is considered in § 3286.307(c)(2). |
| § 3286.307(a) | Trainer | 50 | 6,750 | 0.44 | 0.44 | 60.00 | 3,000 | This section requires the trainer to submit an application. There is a cost associated with this provision. The cost associated with this requirement is estimated as the cost for the trainer to read the instructions and complete the form. The cost is estimated at one hour at $60 per hour. This cost will be passed on to installers through the cost of the training class, and it is conceivable that the installer will pass this cost to the consumer. |
| § 3286.307(b) | Trainer | 50 | 6,750 | 0.44 | 0.44 | 60.00 | 3,000 | This section requires the trainer to submit proof of experience. There is a cost associated with this provision. The cost associated with this requirement is estimated as the cost for the installer to provide written verification of the experience. The cost is estimated at one hour at $60 per hour. This cost will be passed on to installers through the cost of the training class, and it is conceivable that the installer will pass this cost to the consumer. |

APPENDIX A.—24 CFR PART 3286: MANUFACTURED HOUSING INSTALLATION PROGRAM COST IMPACT ANALYSIS MATRIX—Continued

| Section | Regulated party | Number of parties affected | Number of homes | Cost impact per single-section home | Cost impact per multi-section home | Annual cost impact per regulated party | Total annual cost impact | Cost impact notes |
|---|---|---|---|---|---|---|---|---|
| § 3286.307(c)(1) | Trainer | 50 | 6,750 | 0.11 | 0.11 | 15.00 | 750 | This section requires the trainer to submit a list of all states where the applicant has had a similar training qualification revoked, suspended, or denied. There is a cost associated with this provision to the trainer. The cost associated with this requirement is the cost for the trainer to provide the list of states. The cost is estimated at 0.25 hour at $60 per hour. This cost will be passed on to installers through the cost of the training class, and it is conceivable that the installer will pass this cost to the consumer. |
| § 3286.307(c)(2) | Trainer | 50 | 6,750 | 0.22 | 0.22 | 30.00 | 1,500 | This section requires the trainer to submit a certification that training provided is in accordance with Subpart D and will meet the curriculum requirements established in §§ 3286.308 or 3286.309, as applicable. There is a cost associated with this provision to the trainer. The cost associated with this requirement is estimated as the cost for the trainer to provide the certification. The cost is estimated at 0.50 hour at $60 per hour. This cost will be passed on to installers through the cost of the training class, and it is conceivable that the installer will pass this cost to the consumer. |
| § 3286.307(d) | Trainer | 50 | 6,750 | 0.01 | 0.01 | 0.90 | 45 | This section provides for the confirmation or denial of trainer qualification. There will be costs associated with this paragraph in states without a qualifying installation program. The cost associated with this requirement is estimated as the cost for the trainer to request the presentation of views. It is estimated that 2% of the applicants applying to be qualified trainers will request such a presentation. The cost is estimated at 45 minutes at $60 per hour for 2% of the applicants. (45/60*$60*0.02)(50)/6,750=$0.01 per home. |
| § 3286.307(e) | | | | | | | | This section prohibits the assignment of trainer qualification to other entities. There is no cost associated with this section. |
| § 3286.308 | | | | | | | | This section provides for the training curriculum requirements. There is no cost associated with the provisions in this section. |
| § 3286.309 | | | | | | | | This section provides for the continuing education trainer and curriculum requirements. There is no cost associated with the provisions in this section. |
| § 3286.311 | Trainer | 50 | 6,750 | 0.01 | 0.01 | 0.90 | 45 | This section provides for the suspension or revocation of the trainer's qualification. There are no costs associated with the provisions in this section other than paragraphs (b) and (d) of this section. Paragraphs (b) and (d) provide for the presentation of views for the qualified trainer prior to suspension or revocation of qualification status. There will be costs associated with this provision to trainers in states without a qualifying installation program. The cost associated with this requirement is estimated as the cost for the installer to request the presentation of views. It is estimated that 2% of the qualified trainers will request such a presentation. The cost is estimated at 45 minutes at $60 per hour for 2% of the qualified trainers. (45/60*$60*0.02)(50)/6,750=$0.01 per home. |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| § 3286.313 | Trainer | 50 | 6,750 | 0.44 | 0.44 | 60.00 | 3,000 | This section provides for the process for renewal of a trainer's qualification in states without a qualifying installation program. There are costs associated with the provisions in paragraph (b) in this section to trainers. The cost associated with this requirement is estimated as the cost for the trainer to read the instructions and complete the form for renewal. The cost is estimated at one hour at $60 per hour. This cost will be passed on to installers through the cost of the class and is a potential increase to the price of the home. |
| § 3286.401 | | | | | | | | This section discusses the purpose of Subpart E. The purpose of Subpart E is to set out the responsibilities of the installer who is accountable for the installation of a manufactured home in compliance with the requirements of the HUD-administered installation program. There is no cost associated with this section. |
| § 3286.403 | | | | | | | | This section provides that an installer of manufactured homes must comply with the licensing requirements set forth in Subpart C of this part. There is no cost associated with this section. The cost of licensing was done in the analysis of Subpart C. |
| § 3286.405(a) | Installer | 1,021 | 6,750 | 20.00 | 20.00 | 132.22 | 135,000 | This section requires that the installer verify that the site is appropriate for the installation. There will be a cost associated with this requirement. The cost associated with this requirement will require the installer to conduct a site investigation. It is estimated that this investigation will take 0.5 hour at $40 per hour. The cost will be averaged for 6,750 homes. |
| § 3286.405(b) | Installer | 1,021 | 6,750 | 0.20 | 0.20 | 1.33 | 1,360 | This section requires that the installer notify the retailer, purchaser, and HUD if the site is not appropriate for the installation. There will be a cost associated with this requirement. The cost associated with this requirement is estimated as the cost for the installer to provide the written notification to the retailer. This notification is estimated to take 0.5 hour at $40 per hour. It is estimated that this notification will only be required in 1% of installations. The cost will be averaged for 6,750 homes. |
| § 3286.405(c) | Installer | 1,021 | 6,750 | 0.20 | 0.20 | 1.33 | 1,360 | This section requires that the installer notify the manufacturer and retailer if a failure to comply with the construction and safety standards is noticed during the installation. There will be a cost associated with this requirement. The cost associated with this requirement is estimated as the cost for the installer to provide the written notification to the manufacturer and retailer. This notification is estimated to take 0.5 hour at $40 per hour. It is estimated that this notification will only be required in 1% of installations. The cost will be averaged for 6,750 homes. |
| § 3286.405(d) | Retailer | 340 | 6,750 | 0.10 | 0.10 | 2.00 | 680 | This section requires that the retailer provide a copy of the notification in (b) and (c) above to any subsequent installers. There will be a cost associated with this requirement. The cost associated with this requirement is estimated as the cost for the retailer to provide a copy of the notification above to any subsequent installer. This notification is estimated to take 15 minutes at $40 per hour. The cost will be averaged for 1% of homes installed in states where HUD administers the installation program. |
| § 3286.407 | | | | | | | | This section requires that the installer be responsible for the work performed by each person engaged to perform installation tasks on a manufactured home in accordance with the HUD-administered installation program. There is no cost associated with the requirement. |
| § 3286.409 | | | | | | | | This section provides information regarding the inspection requirements. There is a cost associated with the requirement. The cost regarding the inspection is evaluated in § 3286.111(a)(2). |

APPENDIX A.—24 CFR PART 3286: MANUFACTURED HOUSING INSTALLATION PROGRAM COST IMPACT ANALYSIS MATRIX—Continued

| Section | Regulated party | Number of parties affected | Number of homes | Cost impact per single-section home | Cost impact per multi-section home | Annual cost impact per regulated party | Total annual cost impact | Cost impact notes |
|---|---|---|---|---|---|---|---|---|
| § 3286.411(a) | Installer | | | | | | | When the installation work is complete, an installer must certify that: The manufactured home has been installed in compliance with the manufacturer's installation instructions or with an installation design and instructions that have been certified by a professional engineer or registered architect as providing a level of protection for occupants of the home that equals or exceeds the protection provided by the installation standards in part 3285 of this chapter, and the installation of the home has been inspected as required by this part § 3286 and an inspector has verified the installation as meeting the requirements of this part § 3286. There will be costs associated with the provisions in this section to the installer for homes that are sited in states without a qualifying installation program. This provision is the same as § 3286.111(a); therefore, the cost is not calculated here. |
| § 3286.411(b) | Installer | | | | | | | The installer must provide a signed copy of its certification to the retailer that contracted with the purchaser for the sale of the home, and to the purchaser or other person with whom the installer contracted for the installation work. There will be costs associated with the provisions in this section to the installer for homes that are sited in states without a qualifying installation program. This provision is the same as § 3286.111(b); therefore, the cost is not calculated here. |
| § 3286.413 | Installer | 1,021 | 6,750 | 124.03 | 124.03 | 820.00 | 837,220 | This section provides for the record-keeping requirements for installers. It outlines all of the information that must be kept and mandates that it be kept for 3 years. This section will have an associated cost to the installer in states without qualifying installation programs. The cost is estimated as the required time (filing and organization of files at 4 hours a month at $15 per hour) and materials to keep such storage (file cabinets and computer disk space $100). The cost will be averaged for the 6,750 homes. |
| § 3286.501 | | | | | | | | This section discusses the purpose of Subpart F. The purpose of Subpart F is to provide additional detail about the inspection that must be performed by a qualified third-party inspector before the installation of a manufactured home may be approved by the inspector and certified by the installer under the HUD-administered installation program. There is no cost associated with this section. |
| § 3286.503(a) | Installer | 1,021 | 6,750 | 20.00 | 20.00 | 132.22 | 135,000 | This section requires the installer to arrange for an inspection and provides for the timing of the inspection. There is a cost associated with this requirement to the installer. It is estimated that the installer will take 0.5 hour at $40 per hour per installation to arrange for the inspection of the installation. 0.5*40*6,750=$135,000. |
| § 3286.503(b) | | | | | | | | This section provides for the retailer disclosure requirement. There are costs associated with the retailer disclosure requirements; however, this is accounted for in § 3286.7(b). |
| § 3286.503(c) | Installer | 1,021 | 6,750 | 20.00 | 20.00 | 132.22 | 135,000 | This section requires the installer to provide a copy of the installation instructions to the inspector. There is a cost associated with this provision and it is estimated at $20 per installation. |

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| § 3286.505 | Installer | | | | | | | This section provides that the installation of every manufactured home that is subject to the HUD-administered installation program is required to be inspected for each of the installation elements to ensure it complies with the requirements of part 3285 of this chapter. This provision will have an associated cost for the installations that are subject to the HUD-administered installation program. The cost associated with this provision is accounted for in § 3286.111(a)(2). |
| § 3286.507(a) | | | | | | | | This section requires that when an inspector is satisfied that the manufactured home has been installed in accordance with the requirements; the inspector must provide verification in writing to the installer. There are costs associated with these provisions which have been included in § 3286.111(a)(2). |
| § 3286.507(b) | Installer | | | | | | | Once an installation has been inspected and verified, the installer is permitted to certify the installation as provided in § 3286.111. There are costs associated with these provisions; however, they have been determined in § 3286.111(a). |
| § 3286.509(a) | Installer | 1,021 | 6,750 | 2.25 | 2.25 | 14.88 | 15,187 | This section provides for the reinspection of the installation upon failure to pass. This section contains procedures for failed inspections, request for review, and cost for reinspection. This section does have costs associated with the provisions. It is estimated that 5% of homes will need to be reinspected in accordance with this section. The cost is estimated at 30 minutes for the inspector to notify the installer at $90 per hour. 0.05*(30/60*90)*6,750=$15,187.50. |
| § 3286.509(b) | Installer | 1,021 | 6,750 | 10.00 | 10.00 | 66.11 | 67,500 | This section provides that the cost of reinspection of the installation upon failure to pass must be paid by the retailer or installer. This section does have a cost associated with it and is estimated at $200 for the reinspection and verification. It is estimated that only 5% of homes will require reinspection. |
| § 3286.511(a) and (b). | | | | | | | | This section provides the inspector qualifications and inspector independence clause in states that are subject to the HUD-administered installation program. There is no cost associated with these provisions. |
| § 3286.511(c) | Inspector | 4,000 | | | | 0.19 | 750 | This section allows the inspector a presentation of views prior to suspension or revocation of an inspector's authority to inspect manufactured home installations. There is a cost associated with this provision. It is estimated that less than five inspectors a year will request a presentation of views. The cost would not have an impact on the cost of manufactured homes. The cost to the inspector is estimated at 1.5 hours at $100 per hour for five inspectors. (1.5 hours*$100)(5)=$750. This cost will not affect the cost of the manufactured home. |
| § 3286.511(d) | Inspector | 4,000 | | | | 0.19 | 750 | This section allows the inspector whose qualification has been suspended or revoked to apply for reauthorization. There will be costs associated with this provision to the inspector. The cost associated with this requirement is estimated as then cost for the trainer to apply for qualifications. It is estimated that less than five inspectors will have their qualifications suspended or revoked. The cost is estimated at 90 minutes at $100 per hour for five inspectors. (90/60*$100*5)=$750. This cost will not affect the cost of the manufactured home. |

APPENDIX A.—24 CFR PART 3286: MANUFACTURED HOUSING INSTALLATION PROGRAM COST IMPACT ANALYSIS MATRIX—Continued

| Section | Regulated party | Number of parties affected | Number of homes | Cost impact per single-section home | Cost impact per multi-section home | Annual cost impact per regulated party | Total annual cost impact | Cost impact notes |
|---|---|---|---|---|---|---|---|---|
| § 3286.601 | | | | | | | | This section discusses the purpose of Subpart G. The purpose of this subpart is to set out the requirements that apply to a retailer with respect to the federal installation requirements applicable to new manufactured homes that the retailer sells or leases and that will be installed in states that do not have qualifying installation programs. These requirements are in addition to other requirements that apply to retailers of manufactured homes pursuant to other parts of this chapter. There are no costs associated with these provisions. |
| § 3286.603 | | | | | | | | This section provides for retailer requirements at or before sale. Specifically, the retailer disclosure to the purchaser and temporary support. There are costs associated with this section; however, these costs have been calculated in § 3286.7(b). |
| § 3286.605 | | | | | | | | This section provides for retailer requirements after sale; specifically, the tracking of the installation, retailer concurrence on the certification, and other tracking and compliance requirements. There are costs associated with this section; however, these costs have been calculated for § 3286.113 and are not repeated here. |
| § 3286.607 | | | | | | | | Provides that the retailer is responsible for the reporting and record-keeping requirements under § 3286.113. There are costs associated with this section; however, they have been determined in § 3286.113(e). |
| § 3286.701 | | | | | | | | Provides the purpose of Subpart H. The purpose of Subpart H is to set out the mechanisms by which manufacturers, retailers, distributors, installers, and installation inspectors will be held accountable for assuring the appropriate installation of manufactured homes. There are no costs associated with this section. |
| § 3286.703 | All | 24,927 | | | | | 450 | Provides for penalties and injunctive relief for failures to comply, the presentation-of-views, and the procedures for investigations. These provisions have an associated cost with the presentation-of-views requirement. It is estimated that less that 10 requests for presentation of views will be requested that have not been accounted for in the other specific section. The cost would not have an impact on the cost of manufactured homes. The cost to the inspector is estimated at 45 minutes at $60 per hour for 10 instances. (45/60*$60)(10)=$450. |
| § 3286.705 | | | | | | | | Provides for the discussion of the dispute resolution program. These provisions do not have an associated cost. |
| § 3286.801 | | | | | | | | Provides the purpose of Subpart I. The purpose of Subpart I is to establish the requirements that must be met by a state to implement and administer its own installation program in such a way that the state would not be covered by the HUD-administered installation program. There are no costs associated with this section. |
| § 3286.803 | | | | | | | | Provides for the requirements for a qualified State Installation Program stating that a qualified State installation program supersedes the HUD-administered installation program, a state installation program must include the minimum elements to be approved, and the provisions for conditional acceptance. There are no costs associated with this section. |

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| § 3286.805(a) | State | 35 | | | | 80.00 | 2,800 | This section requires states seeking identification as a qualified installation program to submit a completed State Installation Program Certification Form to the Secretary for review and acceptance. There will be a cost to the state to complete this certification. The estimated cost will include the time of one staff person for 2 hours at $40 per hour. The cost would not have an impact on the cost of manufactured homes. |
| § 3286.805(b) | | | | | | | | HUD will review the state plan and contact the state regarding the application. There is no cost associated with this provision. |
| § 3286.805(c) | State | 35 | | | | 2.29 | 80 | Provides for the presentation of views by the states if rejecting the certification. It is estimated that less than 1% of states applying to administer their own installation program will request a presentation of views. The cost to the state is estimated at 120 minutes at $40 per hour for 1 state application. (120/60*$40)(1)=$80. The cost would not have an impact on the cost of manufactured homes. |
| § 3286.807 | State | 35 | | | | 40.00 | 1,400 | This section requires that states submit a new State Installation Program Certification Form to the Secretary for review every 3 years to maintain its status as having a qualified installation program. There will be a cost to the state to complete this certification. The estimated cost will include the time of one staff person for one hour at $40 per hour. The cost would not have an impact on the cost of manufactured homes. |
| § 3286.809 | State | 35 | | | | 2.29 | 80 | This section states that whenever the Secretary finds that a state installation program fails to comply substantially with any provision of the installation program requirements or that the state program has become inadequate, the Secretary will notify the state of withdrawal of acceptance or conditional acceptance of the state installation program. There will be a cost to the state to complete this request. The estimated cost will include the time of one staff person for 1 hour at $40 per hour for an estimated 2 states. (1*40*2)=$80. The cost would not have an impact on the cost of manufactured homes. |
| § 3286.811 | | | | | | | | Provides that a state with a qualifying installation program will operate in lieu of HUD with respect to only the installation program established under Subparts B through H of this part § 3286. No state may permit its installation program, even if it is a qualified installation program under this part, to supersede the requirements applicable to any other aspect of HUD's manufactured housing program. There are no costs associated with this section. |
| § 3286.813 | | | | | | | | If a state installation program is included in a state plan approved in accordance with § 3282.302 of this chapter, the state installation program is subject to all of the requirements for such a state plan, including annual review by HUD. There are no costs associated with this section. |

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance number for Manufactured Housing is 14.171.

**List of Subjects in 24 CFR Part 3286**

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Manufactured homes, Reporting and recordkeeping requirements.

■ Accordingly, HUD adds a new part 3286 in chapter XX of Title 24 of the Code of Federal Regulations to read as follows:

## PART 3286—MANUFACTURED HOME INSTALLATION PROGRAM

**Subpart A—Generally Applicable Provisions and Requirements**

Sec.
3286.1 Purpose.
3286.2 Applicability.
3286.3 Definitions.
3286.5 Overview of installation program.
3286.7 Consumer information.
3286.9 Manufacturer shipment responsibilities.
3286.11 Temporary storage of units.
3286.13 Waiver of rights invalid.
3286.15 Consultation with the Manufactured Housing Consensus Committee (MHCC).

**Subpart B—Certification of Installation in HUD-Administered States**

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3286.103 DAPIA-approved installation instructions.
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3286.109 Inspection requirements—generally.
3286.111 Installer certification of installation.
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**Subpart C—Installer Licensing in HUD-Administered States**

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**Subpart D—Training of Installers in HUD-Administered States**

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**Subpart E—Installer Responsibilities of Installation in HUD-Administered States**

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**Subpart F—Inspection of Installations in HUD-Administered States**

3286.501 Purpose.
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3286.507 Verifying installation.
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**Subpart G—Retailer Responsibilities in HUD-Administered States**

3286.601 Purpose.
3286.603 At or before sale.
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3286.607 Recordkeeping.

**Subpart H—Oversight and Enforcement in HUD-Administered States**

3286.701 Purpose.
3286.703 Failure to comply.
3286.705 Applicability of dispute resolution program.

**Subpart I—State Programs**

3286.801 Purpose.
3286.803 State qualifying installation programs.
3286.805 Procedures for identification as qualified installation program.
3286.807 Recertification required.
3286.809 Withdrawal of qualifying installation program status.
3286.811 Effect on other manufactured housing program requirements.
3286.813 Inclusion in state plan.

**Authority:** 42 U.S.C. 3535(d), 5404, and 5424.

## Subpart A—Generally Applicable Provisions and Requirements

### § 3286.1 Purpose.

(a) *Purpose.* The purpose of this part is to establish the regulations that are applicable to HUD's administration of an installation program that meets the requirements of sections 602 (42 U.S.C. 5401) and 605 (42 U.S.C. 5404) of the National Manufactured Housing Construction and Safety Standards Act of 1974. The purpose of this subpart A is to establish the regulations that are applicable with respect to all manufactured homes before they are sold to a purchaser. The requirements in subpart A apply regardless of whether the actual installation of a manufactured home is regulated by HUD or a state with a qualifying installation program.

(b) *Implementation.* This part is effective on October 20, 2008. Implementation will be undertaken in accordance with the phased-in schedule provided by notice published in the **Federal Register**.

### § 3286.2 Applicability.

(a) *All states.* The requirements in subpart A are applicable in all states.

(b) *States without installation programs.* The requirements in subparts B through H of this part are applicable only in those states where HUD is administering an installation program in accordance with this part.

(c) *States with installation programs.* The requirements in subpart I of this part are applicable to only those states that want to administer their own installation programs in lieu of the installation program administered by HUD in accordance with this part.

(d) *Exclusion.* None of the requirements of this part apply to:

(1) Any structure that a manufacturer certifies as being excluded from the coverage of the Act in accordance with § 3282.12 of this chapter; or

(2) Temporary housing units provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) to victims of Presidentially declared disasters, when the manufactured home is installed by persons holding an emergency contractor license issued by the state in which the home is sited or installed by the Federal Emergency Management Agency; or

(3) Any manufactured home after the initial installation of the home following the first purchase of the home in good faith for purposes other than resale. State installation programs may regulate subsequent installations of manufactured homes.

(4) Any manufactured home installed on Indian reservations.

### § 3286.3 Definitions.

The following definitions apply in this part, except as otherwise noted in the regulations in this part:

*Act* means the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401–5425.

*Certification of installation* means the certification, provided by an installer under the HUD-administered installation program in accordance with § 3286.111, that indicates that the manufactured home has been installed in compliance with the appropriate design and instructions and has been inspected as required by this part.

*Defect* means any defect in the performance, construction, components, or material of a manufactured home that renders the home or any part thereof not fit for the ordinary use for which it was intended.

*Design Approval Primary Inspection Agency (DAPIA)* means a state agency or private organization that has been accepted by the Secretary, in accordance with the requirement of subpart H of part 3282, to evaluate and either approve or disapprove manufactured home designs and quality control procedures.

*Distributor* means any person engaged in the sale and distribution of manufactured homes for resale.

*HUD* means the United States Department of Housing and Urban Development.

*HUD-administered installation program* means the installation program to be administered by HUD, in accordance with this part, in those states that do not have a qualifying installation program.

*Installation* means completion of work done specified in § 3286.505 to stabilize, support, anchor, and close up a manufactured home and to join sections of a multi-section manufactured home, when any such work is governed by the federal installation standards in part 3285 of this chapter or by state installation standards that are certified as part of a qualifying installation program.

*Installation defect* means any defect in the performance, installation, installation components, installation material, or close-up of a manufactured home that renders the home or any part thereof not fit for the ordinary use for which it was intended or otherwise takes the home out of compliance with the Manufactured Home Construction and Safety Standards in 24 CFR part 3280.

*Installation design* means drawings, specifications, sketches, and the related engineering calculations, tests, and data in support of the installation configurations and systems to be incorporated in the installation of manufactured homes.

*Installation instructions* means DAPIA-approved instructions provided by the home manufacturer that accompany each new manufactured home and detail the home manufacturer requirements for support and anchoring systems and other work completed at the installation site to comply with the Model Manufactured Home Installation Standards in 24 CFR part 3285 and the Manufactured Home Construction and Safety Standards in 24 CFR part 3280.

*Installation standards* means the standards established by HUD in 24 CFR part 3285, or any set of state standards that the Secretary has determined provide protection to the residents of manufactured homes that equals or exceeds the protection provided by the standards in 24 CFR part 3285.

*Installer* means the person or entity who is retained to engage in, or who engages in, the business of directing, supervising, controlling, or correcting the initial installation of a manufactured home, as governed by part 3285 of this chapter.

*Installer's license* or *installation license* means the evidence that an installer has met the requirements for installing manufactured homes under the HUD-administered installation program. The term does not incorporate a state-issued installation license or certification, except to the extent provided in this part. The term does not imply that HUD approves or recommends an installer or warrants the work of an installer, and should not be used in any way that indicates HUD approval in violation of 18 U.S.C. 709.

*Lessee* means the first person who leases a manufactured home from a retailer after the initial installation.

*Manufactured home* means a structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width or 40 body feet or more in length, or, when erected on-site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term also includes any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification pursuant to § 3282.13 of this chapter and complies with the installation standards established under part 3285 and the construction and safety standards in part 3280 of this chapter, but such term does not include any self-propelled recreational vehicle. Calculations used to determine the number of square feet in a structure will include the total of square feet for each transportable section comprising the completed structure and will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on-site. These dimensions will include all expandable rooms, cabinets, and other projections containing interior space, but do not include bay windows. Nothing in this definition should be interpreted to mean that a manufactured home necessarily meets the requirements of HUD's Minimum Property Standards (HUD Handbook 4900.1) or that it is automatically eligible for financing under 12 U.S.C. 1709(b).

*Manufactured Housing Consensus Committee*, or *MHCC*, means the consensus committee established pursuant to section 604(a)(3) of the Act, 42 U.S.C. 5403(a)(3).

*Manufacturer* means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes for resale.

*Manufacturer's certification label* means the permanent label that is required by § 3280.11 of this chapter to be affixed to each transportable section of each manufactured home.

*Person* includes, unless the context indicates otherwise, corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals, but does not include any agency of government or tribal government entity.

*Professional engineer or registered architect* means an individual or entity: licensed to practice engineering or architecture in a state; and subject to all laws and limitations imposed by the state agency that regulates the applicable profession, and who is engaged in the professional practice of rendering service or creative work requiring education, training, and experience in architecture or engineering sciences and the application of special knowledge of the mathematical, physical, and engineering sciences in such professional or creative work as consultation, investigation, evaluation, planning or design, and supervision of construction for the purpose of securing compliance with specifications and design for any such work.

*Purchaser* means the first person purchasing a manufactured home in good faith for purposes other than resale.

*Qualified trainer* means a person who has met the requirements established in subpart D of this part to be recognized as qualified to provide training to installers for purposes of the HUD-administered installation program.

*Qualifying installation program* means an installation program that a state certifies, in accordance with the requirements set out in subpart I of this part, as meeting the requirements of 42 U.S.C. 5404(c)(3).

*Resident* means any person residing in the manufactured home.

*Retailer* means any person engaged in the sale, leasing, or distribution of new manufactured homes primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale, and, for purposes of this part, the term includes any manufacturer or distributor that sells a manufactured home directly to a purchaser.

*Secretary* means the Secretary of Housing and Urban Development.

*Set up* means any assembly or installation of a manufactured home on-site that includes aspects of work that are governed by parts 3280 or 3285 of this chapter.

*State* includes each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

**§ 3286.5 Overview of installation program.**

(a) *HUD-administered installation program.* HUD will administer the installation program, as established and set out in subparts A through H of this part, in a state unless that state administers its own qualifying installation program. The states in which HUD administers an installation program can be identified under this part by referring to a list on a Web site maintained by HUD or by calling HUD. For convenience only, the current URL of the Web site is *http://www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm* and the current toll-free telephone number to contact the HUD Office of Manufactured Housing Programs is 1–800–927–2891, extension 57.

(b) *State-administered installation programs.* States that have qualifying installation programs, as established through the procedures set out in subpart I of this part, will administer their own programs, except for generally applicable requirements in this subpart A.

(c) *Manufacturer and retailer requirements.* (1) Manufacturers and retailers are responsible for compliance of the home with the construction and safety standards in part 3280 of this chapter, in accordance with the Act and applicable regulations. Manufacturers and retailers must also comply with applicable requirements in this part relating to the installation of the manufactured home.

(2) In the installation instructions required pursuant to part 3285 of this chapter, the manufacturer must include instructions for supporting the manufactured home or sections of homes temporarily and protecting the interior of the manufactured home or sections of homes from damage, pending the first siting of the home for occupancy. The instructions must be adequate to assure that the temporary supports and weatherization used will be sufficient to prevent the home and its transportable sections from being brought out of conformance with the construction and safety standards in part 3280 of this chapter if the home or its sections is either:

(i) Stored at any location for more than 30 days; or

(ii) In the possession of any entity for more than 30 days.

(d) *HUD oversight.* The Secretary may take such actions as are authorized by the Act to oversee the system established by the regulations in this part, as the Secretary deems appropriate.

**§ 3286.7 Consumer information.**

(a) *Manufacturer's consumer manual.* In each consumer manual provided by a manufacturer as required in § 3282.207 of this chapter, the manufacturer must include a recommendation that any home that has been reinstalled after its original installation should be inspected after it is set up, in order to assure that it has not been damaged and is properly installed.

(b) *Retailer disclosures before sale or lease.* Prior to execution of the sales contract to purchase or agreement to lease a manufactured home, the retailer must provide the purchaser or lessee with a consumer disclosure. This disclosure must be in a document separate from the sales or lease agreement. The disclosure must include the following information, as applicable:

(1) When the installation of the home is in a state that administers its own qualifying installation program, the consumer disclosure must clearly state that the home will be required to comply with all state requirements for the installation of the home;

(2) When the installation of the home is in a state that does not administer its own qualifying installation program, the consumer disclosure must clearly state that the home will be required to comply with federal requirements, including installation in accordance with federal installation standards set forth in 24 CFR part 3285 and certification by a licensed installer of installation work, regardless of whether the work is performed by the homeowner or anyone else, and when certification includes inspection by an appropriate person;

(3) For all homes, the home may also be required to comply with additional state and local requirements for its installation;

(4) For all homes, additional information about the requirements disclosed under paragraphs (b)(1) through (b)(4) of this section is available from the retailer and, in the case of the federal requirements, is available in part 3286 of Title 24 of the Code of Federal Regulations and from the U.S. Department of Housing and Urban Development;

(5) For all homes, compliance with any additional federal, state, and local requirements, including a requirement for inspection of the installation of the home, may involve additional costs to the purchaser or lessee; and

(6) For all homes, a recommendation that any home that has been reinstalled after its original installation should be professionally inspected after it is set up, in order to assure that it has not been damaged in transit and is properly installed.

**§ 3286.9 Manufacturer shipment responsibilities.**

(a) *Providing information to HUD.* At or before the time that each manufactured home is shipped by a manufacturer, the manufacturer must provide HUD, through the Production Inspection Primary Inspection Agency (IPIA), in accordance with § 3282.552 of this chapter, with information, as applicable, about:

(1) The serial number and manufacturer's certification label number of the home;

(2) The manufacturer of the home; and

(3) The name and address of the retailer or distributor that has arranged for the home to be shipped.

(b) *Manufacturer's installation instructions.* The manufacturer is required to provide with each manufactured home, installation designs and instructions for the installation of the manufactured home that have been approved by a DAPIA. A DAPIA must give approval only if the installation designs and instructions provide equal or greater protection than the protection provided under the installation standards.

**§ 3286.11 Temporary storage of units.**

Pursuant to § 3286.5(c), the manufacturer is required to provide instructions for the temporary support and protection of the interior from damage of its manufactured homes or sections of homes. Every manufacturer, distributor, retailer, or installer that has possession of a home is required to support each transportable section of a manufactured home that is temporarily located on a site used by that manufacturer, distributor, retailer, or

installer in accordance with the manufacturer's instructions.

**§ 3286.13 Waiver of rights invalid.**

Any provision of a contract or agreement entered into by a manufactured home purchaser that seeks to waive any recourse to either the HUD installation program or a state-qualifying installation program is void.

**§ 3286.15 Consultation with the Manufactured Housing Consensus Committee (MHCC).**

The Secretary will seek input from the MHCC when revising the installation program regulations in this part 3286. Before publication of a proposed rule to revise these regulations, the Secretary will provide the MHCC with a 120-day opportunity to comment on such revision. The MHCC may send to the Secretary any of the MHCC's own recommendations to adopt new installation program regulations or to modify or repeal any of the regulations in this part. Along with each recommendation, the MHCC must set forth pertinent data and arguments in support of the action sought. The Secretary will either: Accept or modify the recommendation and publish it for public comment in accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 553), along with an explanation of the reasons for any such modification; or reject the recommendation entirely, and provide to the MHCC a written explanation of the reasons for the rejection. This section does not supersede section 605 of the National Manufactured Housing Construction and Safety Standards Act.

## Subpart B—Certification of Installation in HUD-Administered States

**§ 3286.101 Purpose.**

The purpose of this subpart B is to establish the systems for tracking and certifying a manufactured home installation that is to be completed in accordance with the HUD-administered installation program.

**§ 3286.102 Information provided by manufacturer.**

(a) *Shipment of home to retailer or distributor.* At the time the manufactured home is shipped to a retailer or distributor, the manufacturer must provide notice to the retailer or distributor that tracking information for the home is being provided to HUD, and the information must be updated by the retailer or distributor in accordance with the requirements in § 3286.113. Such notice must include all of the information required in § 3286.9(a). The manufacturer is also encouraged to provide notice to the retailer that reminds the retailer of its other responsibilities under this part.

(b) *Manufacturer's installation instructions.* The manufacturer is required to include in its installation instructions for the home a notice that the home is required to be installed in accordance with:

(1) An installation design and instructions that have been provided by the manufacturer and approved by the Secretary directly or through review by the DAPIA; or

(2) An installation design and instructions that have been prepared and certified by a professional engineer or registered architect, that have been approved by the manufacturer and the DAPIA as providing a level of protection for residents of the home that equals or exceeds the protection provided by the federal installation standards in part 3285 of this chapter.

**§ 3286.103 DAPIA-approved installation instructions.**

(a) *Providing instructions to purchaser or lessee.* (1) For each manufactured home sold or leased to a purchaser or lessee, the retailer must provide the purchaser or lessee with a copy of the manufacturer's DAPIA-approved installation instructions for the home.

(2) If the installation requires a design that is different from that provided by the manufacturer in paragraph (a)(1) of this section, the installation design and instructions must be prepared and certified by a professional engineer or registered architect, that have been approved by the manufacturer and the DAPIA as providing a level of protection for residents of the home that equals or exceeds the protection provided by the federal installation standards in part 3285 of this chapter.

(b) *Providing instructions to installer.* When the retailer or manufacturer agrees to provide any set up in connection with the sale of the home, the retailer or manufacturer must provide a copy of the approved installation instructions required in paragraph (a)(1) of this section or, as applicable, installation design and instructions required in paragraph (a)(2) of this section to each company or, in the case of sole proprietor, to each individual who performs set up or installation work on the home.

**§ 3286.105 Requirement for installer licensing.**

(a) *Installer Licensing.* The installer that installs a manufactured home in a state that does not have a qualifying installation program must be certified or licensed in accordance with the requirements in subpart C of this part.

(b) *Use of licensed installer.* When the retailer or manufacturer agrees to provide any set up in connection with the sale or lease of the home, the retailer or manufacturer must ensure that the installer is licensed in accordance with these regulations.

**§ 3286.107 Installation in accordance with standards.**

(a) *Compliance with installation requirements.* (1) For purposes of determining installer compliance, a manufactured home that is subject to the requirements of this subpart B must be installed in accordance with:

(i) An installation design and instructions that have been provided by the manufacturer and approved by the Secretary directly or through review by the DAPIA; or

(ii) An installation design and instructions that have been prepared and certified by a professional engineer or registered architect, that have been approved by the manufacturer and the DAPIA as providing a level of protection for residents of the home that equals or exceeds the protection provided by the federal installation standards in part 3285 of this chapter.

(2) If the installation instructions do not comply with the installation standards, the manufacturer is responsible for any aspect of installation that is completed in accordance with the installation instructions and that does not comply with the installation standards.

(3) All installation work must be in conformance with accepted practices to ensure durable, livable, and safe housing, and must demonstrate acceptable workmanship reflecting, at a minimum, journeyman quality of work of the various trades.

(4) Except as set out in paragraph (a)(2) of this section, all installation defects due to the work of the installer are the responsibility of the installer or retailer or manufacturer that retained the installer and must be corrected.

(5) If the manufacturer or retailer retains the installer, they are jointly and severally responsible with the installer for correcting installation defects.

(6) Installation defects must be corrected within 60 days after the date of discovery of the installation defect.

(b) *Secretarial approval of manufacturer's designs.* A manufacturer that seeks a Secretarial determination under paragraph (a) of this section that its installation designs and instructions provide protection to residents of manufactured homes that equals or exceeds the protection provided by the

HUD federal installation standards in part 3285 of this chapter must send the request for such determination and a copy of the applicable designs and instructions to: Administrator, Office of Manufactured Housing Programs, HUD, 451 Seventh Street, SW., Room 9164, Washington, DC 20410–8000, or to a fax number or e-mail address obtained by calling the Office of Manufactured Housing Programs at the toll-free telephone number 1–800–927–2891, extension 57.

(c) *Compliance with construction and safety standards.* The installer must not take the home out of compliance with the construction and safety standards applicable under part 3280 of this chapter.

(d) *Homeowner installations.* The purchaser of a home sited in a state in which HUD administers the installation program may perform installation work on the home that is in accordance with paragraph (a) of this section, provided that the work is certified in accordance with § 3286.111.

(e) *Compliance with construction and safety standards.* This rule does not alter or affect the requirements of the Act concerning compliance with the construction and safety standards, and the implementing regulations in parts 3280 and 3282 of this chapter, which apply regardless of where the work is completed.

**§ 3286.109 Inspection requirements—generally.**

The installer or the retailer must arrange for the inspection of the installation work on any manufactured home that is sited in a state without a qualifying installation program. Before the home can be occupied, the installer must certify, and the inspector must verify, the home as having been installed in conformance with the requirements of § 3286.107(a). The requirements for installer certification are set out in subpart E of this part.

**§ 3286.111 Installer certification of installation.**

(a) *Certification required.* When the installation work is complete, a licensed installer must visit the jobsite and certify that:

(1) The manufactured home has been installed in accordance with:

(i) An installation design and instructions that have been provided by the manufacturer and approved by the Secretary directly or through review by the DAPIA; or

(ii) An installation design and instructions that have been prepared and certified by a professional engineer or registered architect, that have been approved by the manufacturer and the DAPIA as providing a level of protection for residents of the home that equals or exceeds the protection provided by the federal installation standards in part 3285 of this chapter.

(2) The installation of the home has been inspected as required by § 3286.503 and an inspector has verified the installation as meeting the requirements of this part.

(3) All installation defects brought to the installer's attention have been corrected.

(b) *Recipients of certification.* The installer must provide a signed copy of its certification to the retailer that contracted with the purchaser or lessee for the sale or lease of the home, and to the purchaser or other person with whom the installer contracted for the installation work.

**§ 3286.113 Information provided by retailer.**

(a) *Tracking information.* Within 30 days from the time a purchaser or lessee enters into a contract to purchase or lease a manufactured home, the retailer or distributor of the home must provide HUD with the following information:

(1) The home's serial number and manufacturer's certification label number;

(2) The name and address of the retailer or distributor that is selling or leasing the home;

(3) The state and address where the home is to be sited, and, if known, the name of the local jurisdiction; and

(4) The name of the purchaser or lessee.

(b) *Installation information.* Within 30 days from the date of installation, the retailer or distributor of the home must provide HUD with the following information:

(1) The name, address, telephone number, and license number of the licensed installer;

(2) The date of installer certification of completion of the installation;

(3) The date a qualified inspector verified the installation as being in compliance with the requirements of this part; and

(4) The name, address, and telephone number of the qualified inspector who performed the inspection of the installation as required by § 3286.109.

(c) *Method of providing information.* (1) The retailer or distributor must provide a copy of the information set forth in paragraphs (a) and (b) of this section to HUD by providing a copy of the information to HUD by facsimile, e-mail, or first-class or overnight delivery.

(2) The information must be sent to: Administrator, Office of Manufactured Housing Programs, HUD, 451 Seventh Street, SW., Room 9164, Washington, DC 20410–8000, or to a fax number or e-mail address obtained by calling the Office of Manufactured Housing Programs. For convenience only, the URL of the Web site is *http://www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm* and the toll-free telephone number to contact the Office of Manufactured Housing Programs is 1–800–927–2891, extension 57.

(d) *Correcting information.* If the information provided by the retailer changes after it has been provided to HUD, the retailer must correct the information within 10 business days after the retailer learns of the change.

(e) *Record retention requirements.* The retailer or distributor must maintain a copy of the records required in paragraphs (a) and (b) of this section for 3 years from the date of installation, as under § 3286.115.

**§ 3286.115 Date of installation.**

The date of installation will be the date the installer has certified that all required inspections have been completed, all utilities are connected, and the manufactured home is ready for occupancy as established, if applicable, by a certificate of occupancy, except as follows: If the manufactured home has not been sold to the first person purchasing the home in good faith for purposes other than resale by the date the home is ready for occupancy, the date of installation is the date of the purchase agreement or sales contract for the manufactured home.

**§ 3286.117 Completion of sale date.**

(a) *Date of sale defined.* For purposes of determining the responsibilities of a manufacturer, retailer, or distributor under subpart I of part 3282 of this chapter, the sale of a manufactured home will not be considered complete until all the goods and services that the manufacturer, retailer, or distributor agreed to provide at the time the contract was entered into have been provided.

(b) *Compliance with construction and safety standards.* When a retailer or manufacturer is providing the installation and an installer installs a home in such a way as to create an imminent safety hazard or cause the home to not comply with the construction and safety standards in part 3280 of this chapter, and those issues are discovered during the installation of the home, the sale or lease of the home is not complete until the home is corrected.

## Subpart C—Installer Licensing in HUD-Administered States

### § 3286.201 Purpose.

The purpose of this subpart C is to establish the requirements for a person to qualify to install a manufactured home in accordance with the HUD-administered installation program. Installers will be required to meet licensing, training, and insurance requirements established in this part. Licensed installers will self-certify their installations of manufactured homes to be in compliance with the Model Manufactured Home Installation Standards in part 3285 of this chapter. In order for such an installer to self-certify compliance with the installation standards, the installer will have to assure that acceptable inspections, as required in subpart F of this part, are performed.

### § 3286.203 Installation license required.

(a) *Installation license required.* (1) Any individual or entity that engages in the business of directing, supervising, or controlling initial installations of new manufactured homes in a state without a qualifying installation program must itself have, or must employ someone who has, a valid manufactured home installation license issued in accordance with the requirements of this subpart C. For each installation covered under these requirements, the licensed installer, and any company that employs the licensed installer, will be responsible for the proper and competent performance of all employees working under the licensed installer's supervision and for assuring that the installation work complies with this part.

(2) A business that employs a licensed installer to represent the business and hold the installer's license retains primary responsibility for performance of the installation work in compliance with the requirements of this part.

(3) A license is not required for individuals working as direct employees of a licensed installer or for the company that employs a licensed installer, provided that those individuals are supervised by a licensed installer.

(4) The installer must display an original or a copy of a valid installation license at the site of the installation while performing work related to the installation of the home.

(5) The installer is responsible for understanding and following, as applicable, the approved manufacturer installation instructions and any alternative installation design and instructions that have been certified by a professional engineer or registered architect, that have been approved by the manufacturer and DAPIA as providing a level of protection for residents of the home that equals or exceeds the protection provided by the federal installation standards in part 3285 of this chapter.

(b) *Installation license not required.* An installation license is not required for:

(1) Site preparation that is not subject to the requirements of part 3285 of this chapter;

(2) Connection of utilities to the manufactured home;

(3) Add-ons subject to the requirements of § 3282.8(j) of this chapter;

(4) Temporary installations on dealer, distributor, manufacturer, or other sales or storage lots, when the manufactured home is not serving as an occupied residence;

(5) Home maintenance, repairs, or corrections, or other noninstallation-related work performed by the home manufacturer under warranty or other obligations or service agreements;

(6) Installations performed by authorized representatives of the Federal Emergency Management Agency in order to provide emergency housing after a natural disaster; or

(7) Work performed at the home site that is not covered by the federal installation standards in part 3285 of this chapter or the requirements of this part.

### § 3286.205 Prerequisites for installation license.

(a) *Required experience.* (1) In order to obtain an installation license to perform manufactured home installations under the HUD-administered installation program, an individual must meet at least one of the following minimum experience requirements:

(i) 1,800 hours of experience installing manufactured homes;

(ii) 3,600 hours of experience in the construction of manufactured homes;

(iii) 3,600 hours of experience as a building construction supervisor;

(iv) 1,800 hours as an active manufactured home installation inspector;

(v) Completion of one year of a college program in a construction-related field; or

(vi) Any combination of experience or education from paragraphs (a)(1)(i) through (a)(1)(v) of this section that totals 3,600 hours.

(2) An installer who is certified or licensed to perform manufactured home installations in a state with a qualifying installation program may be exempted by the Secretary from complying with these experience requirements, if the Secretary determines that the state requirements are substantially equal to the HUD experience requirements.

(b) *Required training*—(1) *Initial applicant.* An applicant for an installation license must complete 12 hours of training, at least 4 hours of which must consist of training on the federal installation standards in part 3285 of this chapter and the installation program regulations in this part. An installer who is licensed to perform installations in a state with a qualified installation program may postpone the training requirements of this section until October 20, 2009.

(2) *Renewal applicant.* In order to qualify for renewal of an installation license, the licensed installer must complete 8 hours of continuing education during the 3-year license period, including in any particular subject area that may be required by HUD to be covered in order to assure adequate understanding of installation requirements.

(3) The training required under this paragraph (b) must be conducted by trainers who meet the requirements of subpart D of this part and must meet the curriculum requirements established in § 3286.308 or § 3286.309, as applicable.

(c) *Testing.* An applicant for an installation license must have successfully received a passing grade of 70 percent on a HUD-administered or HUD-approved examination covering the Manufactured Home Installation Program and the federal installation standards in part 3285.

(d) *Surety bond or insurance.* An applicant for an installation license must provide evidence of and must maintain, when available in the state of installation, a surety bond or insurance that will cover the cost of repairing all damage to the home and its supports caused by the installer during the installation up to and including replacement of the home. HUD may require the licensed installer to provide proof of the surety bond or insurance at any time. The licensed installer must notify HUD of any changes or cancellations with the surety bond or insurance coverage.

### § 3286.207 Process for obtaining installation license.

(a) *Where to apply.* An applicant for an initial or renewed installation license must provide the applicant's legal name, address, and telephone number to HUD. The application, with all required information, must be sent to: Administrator, Office of Manufactured

Housing Programs, HUD, 451 Seventh Street, SW., Room 9164, Washington, DC 20410–8000, or to a fax number or e-mail address obtained by calling the Office of Manufactured Housing Programs. For convenience only, the current URL of the Web site is *http://www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm,* and the current toll-free telephone number to contact the Office of Manufactured Housing Programs is 1–800–927–2891, extension 57.

(b) *Proof of experience.* Every applicant for an initial installation license must submit verification of the experience required in § 3286.205(a). This verification may be in the form of statements by past or present employers or a self-certification that the applicant meets those experience requirements, but HUD may contact the applicant for additional verification at any time. The applicant must also provide to HUD employment information relevant to the applicant's experience as an installer, including the dates and type of such employment. An installer who is certified or licensed to perform manufactured home installations in a state with a qualifying installation program may seek an exemption from the experience requirement by submitting proof of such certification or license.

(c) *Proof of training.* Every applicant for an initial installation license, or the renewal of an installation license, must submit verification of successful completion of the training required in § 3286.205(b). This verification must be in the form of a certificate of completion from a qualified trainer that the applicant has completed the requisite number of hours of a qualifying curriculum, as set out in § 3286.308 or § 3286.309.

(d) *Proof of surety bond or insurance.* Every applicant for an installation license must submit the name of the applicant's surety bond or insurance carrier and the number of the policy required in § 3286.205(d).

(e) *Other application submissions.* (1) Every applicant for an installation license must submit a list of all states in which the applicant holds a similar installation certification or license, and a list of all states in which the applicant has had such a certification or license revoked, suspended, or denied.

(2) When the examination is not administered by HUD, every applicant for an initial installation license must submit certification of a passing grade on the examination required by § 3286.205(c).

(f) *Issuance or denial of an installation license.* (1) When HUD confirms that an applicant has met the requirements in this subpart C, HUD will either:

(i) Provide an installation license to the applicant that, as long as the installation license remains in effect, establishes the applicant's qualification to install manufactured homes in a state subject to the HUD-administered installation program; or

(ii) Provide a written explanation of why HUD deems the applicant to not qualify for an installation license, including on grounds applicable under § 3286.209 for suspension or revocation of an installation license and any other specified evidence of inability to adequately meet the requirements of this part.

(2) An applicant who is denied an installation license under this subpart C, other than for failure to pass the installation license test, may request from HUD an opportunity for a presentation of views, in accordance with subpart D of part 3282 of this chapter, for the purpose of establishing the applicant's qualifications to obtain an installation license.

(g) *Assignment of license prohibited.* An installation license issued under this part may not be transferred, assigned, or pledged to another entity or individual.

**§ 3286.209 Denial, suspension, or revocation of installation license.**

(a) *Oversight.* The Secretary may make a continuing evaluation of the manner in which each licensed installer is carrying out his or her responsibilities under this subpart C.

(b) *Denial, suspension, or revocation.* After notice and an opportunity for a presentation of views in accordance with subpart D of part 3282 of this chapter, the Secretary may deny, suspend, or revoke an installation license under this part. An installation license may be denied, suspended, or revoked for, among other things:

(1) Providing false records or information to any party;

(2) Refusing to submit information that the Secretary requires to be submitted;

(3) Failure to comply with applicable requirements of parts 3285, 3286, or 3288 of this chapter;

(4) Failure to take appropriate actions upon a failed inspection, as provided in § 3286.509;

(5) Fraudulently obtaining or attempting to obtain an installation license, or fraudulently or deceptively using an installation license;

(6) Using or attempting to use an expired, suspended, or revoked installation license;

(7) Violating state or federal laws that relate to the fitness and qualification or ability of the applicant to install homes; or

(8) Engaging in poor conduct or workmanship as evidenced by one or more of the following:

(i) Installing one or more homes that fail to meet the requirements of § 3286.107;

(ii) An unsatisfied judgment in favor of a consumer;

(iii) Repeatedly engaging in fraud, deception, misrepresentation, or knowing omissions of material facts relating to installation contracts;

(iv) Having a similar state installation license or certification denied, suspended, or revoked;

(v) Having the renewal of a similar state installation license or certification denied for any cause other than failure to pay a renewal fee; or

(vi) Failure to maintain the surety bond or insurance required by § 3286.205(d).

(c) *Other criteria.* In deciding whether to suspend or revoke an installation license, the Secretary will consider the impact of the suspension or revocation on other affected parties and will seek to assure that the sales and siting of manufactured homes are not unduly disrupted.

(d) *Reinstating an installation license.* An installer whose installation license has been denied, suspended, or revoked may submit a new application in accordance with this subpart C. Installers whose installation licenses have been suspended may also reinstate their installation licenses in any manner provided under the terms of their suspensions.

**§ 3286. 211 Expiration and renewal of installation licenses.**

(a) *Expiration.* Each installation license issued or renewed under this subpart C will expire 3 years after the date of its issuance or renewal.

(b) *Renewal.* An application for the renewal of an installation license must include the information required by, and must be submitted to, HUD in accordance with § 3286.207, and must be submitted at least 60 days before the date the license expires. Any person applying for a license renewal after the date the license expires must apply for a new installation license following the requirements established under this subpart C for application for an initial installation license.

## Subpart D—Training of Installers in HUD-Administered States

**§ 3286.301 Purpose.**

The purpose of this subpart D is to establish the requirements for a person

to qualify to provide the training required under subpart C of this part. This training is required for manufactured home installers who want to be licensed in accordance with the HUD-administered installation program.

**§ 3286.303 Responsibilities of qualified trainers.**

(a) *Curriculum and hours.* In providing training to installers for the purpose of qualifying installers under the HUD-administered installation program, qualified trainers must adequately address the curriculum and instruction-time requirements established in subparts C and D of this part.

(b) *Attendance records.* Qualified trainers must maintain records of the times, locations, names of attendees at each session, and content of all courses offered. When an attendee misses a significant portion of any training session, the trainer must assure that the attendee makes up the missed portion of the instruction.

(c) *Certificates of completion of training.* Qualified trainers must provide certificates of completion to course attendees that indicate the level of compliance with the applicable curriculum and time requirements under subparts C and D of this part.

(d) *Record retention.* All records maintained by trainers and continuing education providers must be retained for 3 years, and must be made available to HUD upon request.

(e) *Testing of installers.* Qualified trainers may be authorized to administer the installation license testing required for initial licensing of installers, as set forth in § 3286.205(c).

**§ 3286.305 Installation trainer criteria.**

(a) *Trainer qualification required.* (1) All classes that provide manufactured home installation education classes used to satisfy the requirements for the initial issuance and renewal of installation licenses under subpart C of this part must be taught by trainers who are registered with HUD as qualified trainers. In order to register with HUD as a qualified trainer, a person must meet the experience requirements of this section.

(2) Any entity other than a natural person may also provide initial training and continuing education, as long as such entity establishes its qualification as a trainer by providing evidence and assurance that the entity's individual trainers meet the requirements of this section.

(b) *Experience prerequisites.* In order to qualify as a trainer, an individual or other training entity must provide to HUD evidence that each individual who will be responsible for providing training:

(1) Has a minimum of 3,600 hours of experience in one or more of the following:

(i) As a supervisor of manufactured home installations;

(ii) As a supervisor in the building construction industry;

(iii) In design work related to the building construction industry; or

(2) Has completed a 2-year educational program in a construction-related field.

(c) *Certification of curriculum.* In order to register as a qualified trainer, an individual or other training entity must submit to HUD certification that training provided in accordance with this subpart D will meet the curriculum requirements established in § 3286.308 or § 3286.309, as applicable.

**§ 3286.307 Process for obtaining trainer's qualification.**

(a) *Where to apply.* An applicant for qualification as a trainer must provide the applicant's legal name, address, and telephone number to HUD. The application, with all required information, must be sent to: Administrator, Office of Manufactured Housing Programs, HUD, 451 Seventh Street, SW., Room 9164, Washington DC 20410–8000, or to a fax number or e-mail address obtained by calling the Office of Manufactured Housing Programs. For convenience only, the URL of the Web site is *http://www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm,* and the toll-free telephone number to contact the Office of Manufactured Housing Programs is 1–800–927–2891, extension 57.

(b) *Proof of experience.* (1) Every individual applicant for initial qualification as a trainer must submit verification of the experience required in § 3286.305. This verification may be in the form of statements by past or present employers or a self-certification that the applicant meets those experience requirements, but HUD may contact the applicant for additional verification at any time. The applicant must also provide to HUD employment information relevant to the applicant's experience as a trainer, including the dates and type of such employment. A trainer who is licensed, or otherwise certified, to provide manufactured home installation training in a state with a qualifying installation program may seek an exemption from the experience requirement by submitting proof of such license or other certification. An individual who applies for renewal qualification as a trainer is not required to submit additional proof of experience.

(2) An entity that seeks to be designated as a qualified trainer must provide evidence and assurance that the entity's individual trainers meet the experience requirements in § 3286.305.

(c) *Other qualification information.* (1) An applicant for initial or renewal qualification as a trainer must submit to HUD a list of all states in which the applicant has had a similar training qualification revoked, suspended, or denied.

(2) An applicant also must submit to HUD a certification that training provided in accordance with this subpart D will meet the curriculum requirements established in § 3286.308 or § 3286.309, as applicable.

(d) *Confirmation or denial of qualification.* (1) When HUD confirms that an applicant has met the experience and curriculum requirements in this section, HUD will either:

(i) Provide to the applicant a written confirmation that the applicant is a qualified trainer under this part, and will add the applicant's name to a list maintained by HUD of qualified trainers; or

(ii) Provide a written explanation of why HUD deems the applicant to not qualify as a trainer, including on grounds applicable under § 3286.311 for suspension or revocation of a qualification and any other specified evidence of inability to meet the requirements of this part.

(2) An applicant whose qualification is denied by HUD may request an opportunity for a presentation of views, in accordance with subpart D of part 3282 of this chapter, for the purpose of establishing the applicant's qualifications to be a qualified trainer or the adequacy of any training curriculum that is challenged by HUD.

(e) *Assignment of qualification prohibited.* A qualification issued under this subpart D may not be transferred, assigned, or pledged to another entity or individual.

**§ 3286.308 Training curriculum.**

(a) *Curriculum for initial installer licensing.* The training provided by qualified trainers to installers to meet the initial requirements of the HUD-administered installation program must include at least 12 hours of training, at least 4 hours of which must consist of training on the federal installation standards in part 3285 of this chapter and the installation program regulations in this part. The curriculum must include, at a minimum, training in the following areas:

(1) An overview of the Act and the general regulatory structure of the HUD manufactured housing program;

(2) An overview of the manufactured home installation standards and regulations established in parts 3285 and 3286 of this chapter, and specific instruction including:

(i) Preinstallation considerations;

(ii) Site preparation;

(iii) Foundations;

(iv) Anchorage against wind;

(v) Optional features, including comfort cooling systems;

(vi) Ductwork and plumbing and fuel supply systems;

(vii) Electrical systems; and

(viii) Exterior and interior close-up work;

(3) An overview of the construction and safety standards and regulations found in parts 3280 and 3282 of this chapter;

(4) Licensing requirements applicable to installers;

(5) Installer responsibilities for correction of improper installation, including installer obligations under applicable state and HUD manufactured housing dispute resolution programs;

(6) Inspection requirements and procedures;

(7) Problem-reporting mechanisms;

(8) Operational checks and adjustments; and

(9) Penalties for any person's failure to comply with the requirements of this part 3286 and parts 3285 and 3288 of this chapter.

(b) *Updating curriculum.* Qualified trainers must revise and modify course curriculum as needed to include, at a minimum, any relevant modifications to the Act or the implementing standards and regulations in this chapter, as well as to provide any training further mandated by HUD.

**§ 3286.309 Continuing education-trainers and curriculum.**

(a) *HUD-mandated elements.* Only qualified trainers are permitted to provide any training on particular subject areas that are required by HUD to be an element of the continuing education requirement set out in § 3286.205(b)(2) for the renewal of an installer's license. In implementing this requirement, HUD will:

(1) Establish the minimum number of hours and the required curriculum for such subject areas, according to experience with the program and changes in program requirements; and

(2) Provide information about the hours and curriculum directly to qualified trainers and licensed installers, or through general publication of the information.

(b) *Other training.* (1) The remainder of the 8 hours required to meet the continuing education requirement may be met through training provided either by qualified trainers or by any combination of the following:

(i) Accredited educational institutions, including community colleges and universities;

(ii) A provider of continuing education units who is certified by the International Association for Continuing Education and Training;

(iii) Agencies at any level of government; and

(iv) State or national professional associations.

(2) The curriculum for the remainder of the 8 hours of continuing education training must relate to any aspect of manufactured home installation or construction, or to the general fields of building construction or contracting.

**§ 3286.311 Suspension or revocation of trainer's qualification.**

(a) *Oversight.* The Secretary may make a continuing evaluation of the manner in which each qualified trainer is carrying out the trainer's responsibilities under this subpart D.

(b) *Suspension or revocation of qualification.* After notice and an opportunity for a presentation of views in accordance with subpart D of part 3282 of this chapter, the Secretary may suspend or revoke a trainer's qualification under this part. A trainer's qualification may be suspended or revoked for cause, which may include:

(1) Providing false records or information to HUD;

(2) Refusing to submit information required to be submitted by the Secretary in accordance with the Act;

(3) Certifying, or improperly assisting certification of, a person as having met the training requirements established in this part when that person has not completed the required training;

(4) Failing to appropriately supervise installation training that is used to meet the requirements of this part and that is provided by other persons; and

(5) Any other failures to comply with the requirements of this part.

(c) *Other criteria.* In deciding whether to suspend or revoke a trainer's qualification, the Secretary will consider the impact of the suspension or revocation on other affected parties and will seek to assure that the sales and siting of manufactured homes are not unduly disrupted.

(d) *Reinstating qualification.* A trainer whose qualification has been suspended or revoked may submit a new application to be qualified in accordance with this subpart D no sooner than 6 months after the date of suspension or revocation. A trainer whose qualification has been suspended may also reinstate the qualification in any manner provided under the terms of the suspension.

**§ 3286.313 Expiration and renewal of trainer qualification.**

(a) *Expiration.* Each notice of qualification issued or renewed under this subpart D will expire 5 years after the date of its issuance or renewal.

(b) *Renewal.* An application for the renewal of a trainer qualification must be submitted to HUD in accordance with § 3286.307, and must be submitted at least 60 days before the date the trainer's term of qualification expires. Any person applying for a qualification renewal after the date the qualification expires must apply for a new qualification, following the requirements established under this subpart D for application for initial qualification as an installation trainer.

## Subpart E—Installer Responsibilities of Installation in HUD-Administered States

**§ 3286.401 Purpose.**

The purpose of this subpart E is to set out the responsibilities of the installer who is accountable for the installation of a manufactured home in compliance with the requirements of the HUD-administered installation program.

**§ 3286.403 Licensing requirements.**

An installer of manufactured homes must comply with the licensing requirements set forth in subpart C of this part.

**§ 3286.405 Installation suitability.**

(a) *Site appropriateness.* Before installing a manufactured home at any site, the installer must assure that the site is suitable for installing the home by verifying that:

(1) The site is accessible;

(2) The site is appropriate for the foundation or support and stabilization system that is to be used to install the home in accordance with the federal installation standards or alternative requirements in part 3285 of this chapter;

(3) The data plate required by § 3280.5 of this chapter is affixed to the home, that the home is designed for the roof load, wind load, and thermal zones that are applicable to the intended site; and

(4) The installation site is protected from surface run-off and can be graded in accordance with part 3285.

(b) *Installer notification of unsuitable site.* If the installer determines that the

home cannot be installed properly at the site, the installer must:

(1) Notify the purchaser or other person with whom the installer contracted for the installation work, identifying the reasons why the site is unsuitable;

(2) Notify the retailer that contracted with the purchaser for the sale of the home, identifying the reasons why the site is unsuitable;

(3) Notify HUD, identifying the reasons why the site is unsuitable;

(4) Decline to install the home until the site and the home are both verified by the installer as suitable for the site under this section; and

(5) Ensure that all unique characteristics of the site have been fully addressed.

(c) *Installer notification of failures to comply with the construction and safety standards.* If the installer notices and recognizes failures to comply with the construction and safety standards in part 3280 of this chapter prior to beginning any installation work, during the course of the installation work, or after the installation work is complete, the installer must notify the manufacturer and retailer of each failure to comply.

(d) *Retailer notification.* The retailer must provide a copy of the notification received in paragraphs (b) and (c) of this section to any subsequent installer.

### § 3286.407 Supervising work of crew.

The installer will be responsible for the work performed by each person engaged to perform installation tasks on a manufactured home, in accordance with the HUD-administered installation program.

### § 3286.409 Obtaining inspection.

(a) *Inspection obligations.* Ten business days prior to the completion of installation, the installer must arrange for a third-party inspection of the work performed, in accordance with subpart F of this part, unless the installer and retailer who contracted with the purchaser for the sale of the home agree, in writing, that during the same time period the retailer will arrange for the inspection. Such inspection must be performed as soon as practicable by an inspector who meets the qualifications set forth in § 3286.511. The scope of the inspections that are required to be performed is addressed in § 3286.505.

(b) *Contract rights not affected.* Failure to arrange for an inspection of a home within 5 business days will not affect the validity or enforceability of any sale or contract for the sale of any manufactured home.

(c) *State or local permits.* The licensed installer should obtain all necessary permits required under state or local laws.

### § 3286.411 Certifying installation.

(a) *Certification required.* When the installation work is complete, a licensed installer must visit the jobsite and certify that:

(1) The manufactured home has been installed in accordance with:

(i) An installation design and instructions that have been provided by the manufacturer and approved by the Secretary directly or through review by the DAPIA; or

(ii) An installation design and instructions that have been prepared and certified by a professional engineer or registered architect, that have been approved by the manufacturer and the DAPIA as providing a level of protection for residents of the home that equals or exceeds the protection provided by the federal installation standards in part 3285 of this chapter.

(2) The installation of the home has been inspected as required by § 3286.503, and an inspector has verified the installation as meeting the requirements of this part.

(3) All installation defects brought to the installer's attention have been corrected.

(b) *Recipients of certification.* The installer must provide a signed copy of its certification to the retailer that contracted with the purchaser or lessee for the sale or lease of the home, and to the purchaser or other person with whom the installer contracted for the installation work.

### § 3286.413 Recordkeeping.

(a) *Records to be retained.* The installer must retain:

(1) A record of the name and address of the purchaser or other person with whom the installer contracted for the installation work and the address of the home installed;

(2) A copy of the contract pursuant to which the installer performed the installation work;

(3) A copy of any notice from an inspector disapproving the installation work;

(4) A copy of the qualified inspector's verification of the installation work;

(5) A copy of the installer's certification of completion of installation in accordance with the requirements of this part; and

(6) A copy of foundation designs used to install the home, if different from the designs provided by the manufacturer, including evidence that the foundation designs and instructions were certified by a professional engineer or registered architect, including the name, address, and telephone number of the professional engineer or architect certifying the designs.

(b) Retention requirement. The records listed in paragraph (a) of this section must be maintained for a period of 3 years after the installer certifies completion of installation.

## Subpart F—Inspection of Installations in HUD-Administered States

### § 3286.501 Purpose.

The purpose of this subpart F is to provide additional detail about the inspection that must be performed by a qualified third-party inspector before the installation of a manufactured home may be verified by the inspector and certified by the installer under the HUD-administered installation program.

### § 3286.503 Inspection required.

(a) *Timing of requirements.* Ten business days prior to the completion of the installation of each manufactured home, the installer must arrange for a third-party inspection of the work performed, unless the installer and retailer who contracted with the purchaser for the sale of the home agree, in writing, that during the same time period the retailer will arrange for the inspection. Such inspection must be performed as soon as practicable by an inspector that meets the qualifications set out in § 3286.511. The scope of the inspections that are required to be performed is addressed in § 3286.505.

(b) *Disclosure of requirement.* At the time of sale, the retailer must disclose to the purchaser, in a manner provided in § 3286.7, that the manufactured home must be installed in accordance with applicable federal and state law, including requirements for a third-party inspection of the installation. If the cost of inspection of the home's installation is not included in the sales price of the home, the sales contract must include a clear disclosure about whether the purchaser will be charged separately for the inspection of the home's installation and the amount of such charge.

(c) *Providing instructions to inspectors.* Installation instructions must be made available to the inspector at the installation site by the installer.

### § 3286.505 Minimum elements to be inspected.

The installation of every manufactured home that is subject to the HUD-administered installation program is required to be inspected for each of the installation elements included in a checklist. The checklist must include assurance that each of the following elements complies with the

requirements of part 3285 of this chapter:

(a) Site location with respect to home design and construction;

(b) Consideration of site-specific conditions;

(c) Site preparation and grading for drainage;

(d) Foundation construction;

(e) Anchorage;

(f) Installation of optional features;

(g) Completion of ductwork, plumbing, and fuel supply systems;

(h) Electrical systems;

(i) Exterior and interior close-up;

(j) Skirting, if installed; and

(k) Completion of operational checks and adjustments.

**§ 3286.507 Verifying installation.**

(a) *Verification by inspector.* When an inspector is satisfied that the manufactured home has been installed in accordance with the requirements of this part, the inspector must provide verification of the installation in writing and return the evidence of such verification to the installer.

(b) *Certification by installer.* (1) Once an installation has been inspected and verified, the installer is permitted to certify the installation as provided in § 3286.111. The installer must provide a signed copy of the certification to:

(i) The retailer that contracted with the purchaser for the sale of the home;

(ii) The purchaser; and

(iii) Any other person that contracted to obtain the services of the installer for the installation work on the home.

(2) The installer must retain records in accordance with § 3286.413.

**§ 3286.509 Reinspection upon failure to pass.**

(a) *Procedures for failed inspection.* If the inspector cannot verify the installation of the manufactured home, the inspector must immediately notify the installer of any failures to comply with the installation standards and explain the reasons why the inspector cannot issue verification that the installation complies with the requirements of this part. After the installation is corrected, it must be reinspected before verification can be issued.

(b) *Cost of reinspection.* If there is any cost for the reinspection of an installation that an inspector has refused to verify, that cost must be paid by the installer or the retailer and, absent a written agreement with the purchaser that specifically states otherwise, that cost cannot be charged to the purchaser of the manufactured home.

**§ 3286.511 Inspector qualifications.**

(a) Qualifications. Any individual or entity who meets at least one of the following qualifications is permitted to review the work and verify the installation of a manufactured home that is subject to the requirements of the HUD-administered installation program:

(1) A manufactured home or residential building inspector employed by the local authority having jurisdiction over the site of the home, provided that the jurisdiction has a residential code enforcement program;

(2) A professional engineer;

(3) A registered architect;

(4) A HUD-accepted Production Inspection Primary Inspection Agency (IPIA) or a Design Approval Primary Inspection Agency (DAPIA); or

(5) An International Code Council certified inspector.

(b) *Independence required.* The inspector must be independent of the manufacturer, the retailer, the installer, and any other person that has a monetary interest, other than collection of an inspection fee, in the completion of the sale of the home to the purchaser.

(c) *Suspension or revocation of inspection authority.* After notice and an opportunity for a presentation of views in accordance with subpart D of part 3282 of this chapter, the Secretary may suspend or revoke an inspector's authority to inspect manufactured home installations under this part in HUD-administered states. An inspector's authority may be suspended or revoked for cause. In deciding whether to suspend or revoke an inspector's authority to conduct such installation inspections, the Secretary will consider the impact of the suspension or revocation on other affected parties and will seek to assure that the sales and siting of manufactured homes are not unduly disrupted.

(d) *Reinstating inspection authority.* An inspector whose authority to inspect manufactured home installations in HUD-administered states has been suspended or revoked under this section may apply for reauthorization by contacting: Administrator, Office of Manufactured Housing Programs, HUD, 451 Seventh Street, SW., Room 9164, Washington, DC 20410–8000, or to a fax number or e-mail address obtained by calling the Office of Manufactured Housing Programs at the toll-free telephone number 1–800–927–2891, extension 57.

## Subpart G—Retailer Responsibilities in HUD-Administered States

**§ 3286.601 Purpose.**

The purpose of this subpart G is to set out the requirements that apply to a retailer with respect to the federal installation requirements applicable to new manufactured homes that the retailer sells or leases and that will be installed in states that do not have qualifying installation programs. These requirements are in addition to other requirements that apply to retailers of manufactured homes pursuant to other parts of this chapter.

**§ 3286.603 At or before sale.**

(a) *Before contract.* (1) The retailer is required to support each transportable section of a manufactured home that is temporarily or permanently located on a site used by a retailer in accordance with the manufacturer's instructions.

(2) Before a purchaser or lessee signs a contract of sale or lease for a manufactured home, the retailer must:

(i) Provide the purchaser or lessee with a copy of the consumer disclosure statement required in § 3286.7(b); and

(ii) Verify that the wind, thermal, and roof load zones of the home being purchased or leased are appropriate for the site where the purchaser or lessee plans to install the home for occupancy; and

(iii) If the cost of inspection of the home's installation is not included in the sales price of the home, provide the disclosure required in § 3286.7(b).

(b) *Occupancy site not known.* When at the time of purchase the purchaser does not know the locale for the initial siting of the home for occupancy, the retailer must advise the purchaser that:

(1) The home was designed and constructed for specific wind, thermal, and roof load zones; and

(2) If the home is sited in a different zone, the home may not pass the required installation inspection because the home will have been installed in a manner that would take it out of compliance with the construction and safety standards in part 3280 of this chapter.

(c) *Verification of installer license.*When the retailer or manufacturer agrees to provide any set up in connection with the sale or lease of the home, the retailer or manufacturer must verify that the installer is licensed in accordance with these regulations.

**§ 3286.605 After sale.**

(a) *Tracking installation information.* The retailer is responsible for providing to HUD the information required pursuant to § 3286.113.

(b) *Other tracking and compliance requirements.* The retailer continues to be responsible for compliance with the tracking and compliance requirements set out in subpart F of part 3282 of this chapter, which are related to HUD construction and safety standards.

**§ 3286.607 Recordkeeping.**

The retailer is responsible for the reporting and recordkeeping requirements under § 3286.113.

## Subpart H—Oversight and Enforcement in HUD-Administered States

**§ 3286.701 Purpose.**

The purpose of this subpart H is to set out the mechanisms by which manufacturers, retailers, distributors, installers, and installation inspectors will be held accountable for assuring the appropriate installation of manufactured homes. The requirements in subpart A of this part are applicable in all states, the requirements in subparts B through H are applicable in states where the HUD-administered installation program operates, and the requirements in subpart I are applicable in states with qualifying installation programs. It is the policy of the Secretary, regarding manufactured home installation program enforcement matters, to cooperate with state or local agencies having authority to regulate the installation of manufactured homes. In addition to actions expressly recognized under this subpart H and other provisions in this part, however, HUD may take any actions authorized by the Act in order to oversee the system established by the regulations in this part.

**§ 3286.703 Failure to comply.**

(a) *Penalties and injunctive relief.* Failure to comply with the requirements of this part is a prohibited act under section 610(a)(7) of the Act, 42 U.S.C. 5409(a). Any person who fails to comply with the requirements of this part is subject to civil and criminal penalties, and to actions for injunctive relief, in accordance with sections 611 and 612 of the Act, 42 U.S.C. 5410 and 5411.

(b) *Presentation of views.* When practicable, the Secretary will provide notice to any person against whom an action for injunctive relief is contemplated and will afford such person an opportunity to request a presentation of views. The procedures set forth in §§ 3282.152 through 3282.154 of this chapter shall apply to each request to present views and to each presentation of views authorized in accordance with this section.

(c) *Investigations.* The procedures for investigations and investigational proceedings are set forth in part 3800 of this chapter.

**§ 3286.705 Applicability of dispute resolution program.**

(a) *Generally.* Regardless of any action taken under § 3286.703, for any defect in a manufactured home that is reported during the one-year period beginning on the date of installation, as specified in § 3286.115, any rights and remedies available under the HUD dispute resolution program, as implemented in part 3288 of this chapter, continue to apply as provided in that part.

(b) *Waiver of rights invalid.* Any provision of a contract or agreement entered into by a manufactured home purchaser that seeks to waive any recourse to either HUD or a state dispute resolution program is void.

## Subpart I—State Programs

**§ 3286.801 Purpose.**

The purpose of this subpart I is to establish the requirements that must be met by a state to implement and administer its own installation program, either as part of its approved state plan or under this subpart, in such a way that the state would not be covered by the HUD-administered installation program. This subpart I also establishes the procedure for determining whether a state installation program meets the requirements of the Act for a qualifying installation program that will operate in lieu of the HUD-administered installation program.

**§ 3286.803 State qualifying installation programs.**

(a) *Qualifying installation program supersedes.* The HUD-administered installation program will not be implemented in any state that is identified as fully or conditionally accepted under the requirements and procedures of this subpart I or in accordance with part 3282 of this chapter.

(b) *Minimum elements.* To be accepted as a fully qualifying installation program, a state installation program must include the following elements:

(1) Installation standards that meet or exceed the requirements of § 3286.107(a) and that apply to every initial installation of a new manufactured home within the state;

(2) The training of manufactured home installers;

(3) The licensing of, or other method of certifying or approving, manufactured home installers to perform the initial installations of new manufactured homes in the state;

(4) A method for inspecting the initial installations of new manufactured homes in the state that is implemented and used to hold installers responsible for the work they perform; and

(5) Provision of adequate funding and personnel to administer the state installation program.

(c) *Conditional acceptance.* (1) A state installation program that meets the minimum requirements set forth under paragraphs (b)(1), (4), and (5) of this section may be conditionally accepted by the Secretary if the state provides assurances deemed adequate by the Secretary that the state is moving to meet all of the requirements for full acceptance. If the Secretary conditionally accepts a state's installation program, the Secretary will provide to the state an explanation of what is necessary to obtain full acceptance.

(2) A conditionally accepted state will be permitted to implement its own installation program in lieu of the HUD-administered program for a period of not more than 3 years. The Secretary may for good cause grant an extension of conditional approval upon petition by the state.

(d) *Limited exemptions from requirements.* A state installation program may be accepted by the Secretary as a qualifying installation program if the state can demonstrate that it lacks legal authority, as a matter of federal law, to impose the minimum requirements set forth under paragraph (b) of this section in certain geographic areas of the state, but that the minimum requirements do apply in all other geographic areas of the state.

**§ 3286.805 Procedures for identification as qualified installation program.**

(a) *Submission of certification.* (1) A state seeking identification as having a qualified installation program must submit a completed State Installation Program Certification form to the Secretary for review and acceptance and indicate if the installation program will be part of its approved state plan in accordance with part 3282 of this chapter.

(2) A state must include a qualified installation program as part of any state plan application submitted for approval under § 3282.302 of this chapter, if the state does not have a fully or conditionally approved state plan in effect at the time of submission of the state plan application. In all other cases, a qualified installation program is permitted, but is not required, to be submitted as a part of a state plan

approved in accordance with § 3282.305 of this chapter.

(b) *HUD review and action.* (1) The Secretary will review the State Installation Program Certification form submitted by a state and may request that the state submit additional information as necessary. Unless the Secretary has contacted the state for additional information or has conditionally accepted or rejected the state installation program, the state installation program will be considered to have been accepted by the Secretary as a fully qualifying installation program as of the earlier of:

(i) Ninety days after the Secretary receives the state's completed State Installation Program Certification form; or

(ii) The date that the Secretary issues notification to the state of its full acceptance.

(2) A notice of full or conditional acceptance will include the effective date of acceptance.

(c) *Rejection of state installation program.* (1) If the Secretary intends to reject a state's installation program, the Secretary will provide to the state an explanation of what is necessary to obtain full or conditional acceptance. The state will be given 90 days from the date the Secretary provides such explanation to submit a revised State Installation Program Certification form.

(2) If the Secretary decides that any revised State Installation Program Certification form is inadequate, or if the state fails to submit a revised form within the 90-day period or otherwise indicates that it does not intend to change its form, the Secretary will notify the state that its installation program is not accepted.

(3) A state whose State Installation Program Certification form is rejected has a right to a presentation of views on the rejection using the procedures set forth under subpart D of part 3282 of this chapter. The state's request for a presentation of views must be submitted to the Secretary within 60 days after the Secretary has provided notification that the state's installation program has been rejected.

### § 3286.807 Recertification required.

(a) *Recertification.* To maintain its status as a qualified installation program when the installation program is not part of the approved state plan in accordance with part 3282 of this chapter, a state must submit a new State Installation Program Certification form to the Secretary for review and action as follows:

(1) Every 5 years after the state's most recent certification as a qualified installation program; and

(2) Whenever there is a change to the state's installation program or a change in the HUD requirements applicable to qualifying installation programs such that the state's installation program no longer complies with the minimum requirements set forth in § 3286.803(b), regardless of when the state's next regular recertification of its installation program would be due.

(b) *Due date of recertification.* (1) A state's recertification required in paragraph (a) of this section must be filed within 90 days of, as applicable:

(i) The 5-year anniversary of the effective date of the Secretary's acceptance of the state's most recent certification as a qualified installation program; and

(ii) The effective date of the state or HUD action that makes a significant change to the state's installation program.

(2) Upon petition by the state, the Secretary may for good cause grant an extension of the deadline for recertification.

(c) *Failure to Recertify.* (1) A state whose certification of its installation program, when the installation program is not part of the approved state plan in accordance with part 3282 of this chapter, has been accepted by the Secretary is permitted to administer its installation program in lieu of the HUD-administered installation program until the effective date of a notification by the Secretary that the state's certification of its installation program is no longer approved.

(2) A state whose recertification of its installation program is rejected by the Secretary has a right to a presentation of views on the rejection using the procedures set forth under subpart D of part 3282 of this chapter. The state's request for a presentation of views must be submitted to the Secretary within 60 days after the Secretary has provided notification that the state's recertification of its installation program has been rejected.

### § 3286.809 Withdrawal of qualifying installation program status.

(a) *Voluntary withdrawal.* Any state that intends to withdraw from its responsibilities to administer a qualifying installation program should provide the Secretary with a minimum of 90 days notice.

(b) *Involuntary withdrawal.* Whenever the Secretary finds, after affording notice and an opportunity for a hearing in accordance with subpart D of part 3282 of this chapter, that a state installation program fails to comply substantially with any provision of the installation program requirements or that the state program has become inadequate, the Secretary will notify the state of withdrawal of acceptance or conditional acceptance of the state installation program. The HUD-administered installation program will begin to operate in such state at such time as the Secretary establishes in issuing the finding.

### § 3286.811 Effect on other manufactured housing program requirements.

A state with a qualifying installation program will operate in lieu of HUD with respect to only the installation program established under subparts B through H of this part. No state may permit its installation program, even if it is a qualified installation program under this part, to supersede the requirements applicable to HUD's Manufactured Housing Construction and Safety Standards and enforcement programs. Regardless of whether a state has a qualified installation program:

(a) *Construction and safety standards.* Any responsibilities, rights, and remedies applicable under the Manufactured Home Construction and Safety Standards Act in part 3280 of this chapter and the Manufactured Home Procedural and Enforcement Regulations in part 3282 of this chapter continue to apply as provided in those parts; and

(b) *Dispute resolution.* For any defect in a manufactured home that is reported during the one-year period beginning on the date of installation defined in § 3286.115, any responsibilities, rights, and remedies applicable under the HUD dispute resolution program as implemented in part 3288 of this chapter continue to apply as provided in that part.

### § 3286.813 Inclusion in state plan.

If a state installation program is included in a state plan approved in accordance with § 3282.302 of this chapter, the state installation program is subject to all of the requirements for such a state plan, including annual review by HUD.

Dated: June 5, 2008.

**Brian D. Montgomery,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. E8–13289 Filed 6–19–08; 8:45 am]

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Federal Register

**Friday,**

**June 20, 2008**

## Part IV

# Department of Agriculture

**Agricultural Marketing Service**

**7 CFR Part 1000**

**Milk in the Northeast and Other Marketing Areas; Tentative Partial Final Decision on Proposed Amendments and Opportunity To File Written Exceptions to Tentative Marketing Agreements and Orders; Proposed Rule**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1000**

**[Docket No. AMS–DA–07–0026; AO–14–A77, et al.; DA–07–02–A]**

## Milk in the Northeast and Other Marketing Areas; Tentative Partial Final Decision on Proposed Amendments and Opportunity To File Written Exceptions to Tentative Marketing Agreements and Orders

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule; tentative partial final decision.

**SUMMARY:** This tentative partial final decision proposes to adopt changes to the manufacturing cost allowances and the butterfat yield factor used in Class III and Class IV product-price formulas applicable to all Federal milk marketing orders on an interim basis. A separate decision regarding the collection of manufacturing cost information, the use of an energy cost adjustor and providing for a cost add-on feature to Class III and Class IV product-pricing formulas will be addressed in a separate decision. This tentative partial decision requires determining if producers approve the issuance of the amended orders on an interim basis.

**DATES:** Comments should be submitted on or before August 19, 2008.

**ADDRESSES:** Comments (six copies) should be filed with the Hearing Clerk, Stop 9200—Room 1031, United States Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–9200. Comments may also be submitted at the Federal eRulemaking portal: *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Jack Rower, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement, Stop 0231—Room 2971–S, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 720–2357, e-mail address: *jack.rower@usda.gov*.

**SUPPLEMENTARY INFORMATION:** This tentative partial final decision proposes to adopt on an interim final and emergency basis, amendments to the manufacturing (make) allowances for cheese, butter, nonfat dry milk (NFDM) and dry whey powder contained in the Class III and Class IV product price formulas. Specifically, this decision proposes to adopt the following make allowances: Cheese—$0.2003 per pound; butter—$0.1715 per pound; NFDM—$0.1678 per pound; and dry whey—$0.1991 per pound. This decision also proposes increasing the butterfat yield factor in the butterfat price formula from 1.20 to 1.211.

This decision also addresses proposals published in the hearing notice as Proposals 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 18 that seek to change various features of the Class III and Class IV product-price formulas. Proposals seeking to establish a manufacturing cost survey (Proposal 2), establish an energy cost adjustor (Proposal 17) and establish a cost add-on (Proposal 20), will be addressed in a separate recommended decision.

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 604–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the U.S. Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an habitant, or has its principal place of business, has jurisdiction in equity to review the USDA's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

### Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a small business if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a small business if it has fewer than 500 employees.

For the purposes of determining which dairy farms are small businesses, the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most small dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of February 2007, the month the initial public hearing was held, the milk of 49,712 dairy farmers was pooled on the Federal order system. Of the total, 46,729 dairy farmers, or 94 percent, were considered small businesses. During the same month, 352 plants were regulated by or reported their milk receipts to be pooled and priced on a Federal order. Of the total, 186 plants, or 53 percent, were considered small businesses.

This decision proposes that all orders be amended by changing the make allowances contained in the formulas used to compute component prices and the minimum class prices in all Federal milk orders. Specifically, the make allowance for butter increases from $0.1202 to $0.1715 per pound; the make allowance for cheese increases from $0.1682 to $0.2003 per pound; the make allowance for NFDM increases from $0.1570 to $0.1678 per pound; and the make allowance for dry whey increases from $0.1956 to $0.1991 per pound. The butterfat yield factor in the butterfat price formulas is increased from 1.20 to 1.211.

The proposed adoption of these new make allowances serves to approximate the average cost of producing cheese, butter, NFDM and dry whey for manufacturing plants located in Federal milk marketing areas. The established criteria for the make allowance changes are applied in an identical fashion to both large and small businesses and will not have any different impact on those businesses producing manufactured milk products.

An economic analysis has been performed that discusses impacts of the proposed amendments on industry

participants including producers and manufacturers. It can be found on the AMS Dairy Web site at *http://www.ams.usda.gov/dairy*. Based on the economic analysis we have concluded that the proposed amendments will not have a significant economic impact on a substantial number of small entities.

The Agricultural Marketing Service (AMS) is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

This tentative partial final decision does not require additional information collection that needs clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. The forms require only a minimal amount of information that can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Interested parties were invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities.

**Economic Analysis**

In order to assess the impact of the proposed changes in Federal order producer price formulas, the Department conducted an economic analysis. The complete analysis is available at on the Dairy Programs Web site which can be accessed through *http://www.ams.usda.gov*.

The impacts of the proposed changes to the Class III and Class IV pricing formulas contained in the tentative final decision are summarized as changes from the USDA baseline on an annual basis and as a nine-year average change from 2008–2016. Impacts on the Federal order system are considered to be in the context of the broader U.S. market for milk and dairy products.

*Producers:* The U.S. all-milk price falls an average $0.06 per cwt (0.39 percent) from a baseline level of $16.22 per cwt over the nine-year projection period. The average Federal order minimum blend price at test averages $0.11 per cwt (0.68 percent) below the baseline level of $16.43 per cwt. The lower milk prices result in a tightening of production. In turn, Federal order marketings fall an average 145 million pounds (0.11 percent) below the baseline average of 126.5 billion pounds. Federal order cash receipts decrease an average $165 million (0.79 percent) from the $20.8 billion baseline receipts. U.S. marketings come in an average 240 million pounds (0.13 percent) per year below the baseline average of 187.8 billion pounds. The lower marketings coupled with lower prices across the board result in an average decline of $156 million (0.51 percent) in producer revenue from the baseline average of $30.4 billion.

*Milk Manufacturers and Processors:* Increases to the make allowances in Federal order minimum price formulas are advantageous for dairy product manufacturers. Average wholesale prices over the projection period exceed baseline by the following: Cheddar cheese by $0.0176 per pound (1.14 percent), butter by $0.0346 per pound (1.89 percent), nonfat dry milk by $0.0090 per pound (0.88 percent), and dry whey by $0.0034 per pound (0.94 percent).

In spite of the higher product prices, the make allowance changes are substantial enough that the nine-year average component prices fall from baseline levels. The changes are as follows: Butterfat by $0.0014 per pound (0.07 percent), protein by $0.0451 per pound (1.96 percent), nonfat solids by $0.0018 per pound (0.22 percent) and the other solids price by $0.001 per pound (0.05 percent). Lower component prices are carried through to lower skim milk pricing factors. The Class III skim price falls an average $0.14 per cwt (1.72 percent) from a baseline average level of $8.16 per cwt and remains the Class I price mover.

*Consumers:* The retail price of fluid milk is expected to decrease an average of $0.0094 per gallon (0.27 percent) from the baseline average price of $3.4135 over the nine-year projection period due to the lower Class I price. Consumers respond, albeit modestly, to the decreased prices as evidenced by the average 32 million pound (0.07 percent) increase in Class I marketings from a baseline average of 45 billion pounds over the projection period. Class II marketings increase overall, indicating an increase in consumption of soft products consistent with the slight decline in Class II prices. At the same time, consumers face higher prices for hard manufactured dairy products such as cheese, butter and nonfat dry milk and as a result, Class III and Class IV marketings fall from baseline levels. Consumer demand for hard manufactured dairy products is more elastic than for fluid milk and soft products; consumers are more responsive to changes in price.

*Government Outlays:* With the expiration of the Milk Income Loss Contract (MILC) program, and no activity under Dairy Export Incentive Program (DEIP), any change to government outlays occurs through Milk Price Support Program (MPSP) purchases. Baseline level prices are high enough that few government purchases are expected. Under the proposed changes, removals change only slightly at the beginning of the projection period; remaining unchanged in from baseline in the long run projection.

The proposed changes to Class III and Class IV pricing formulas result in lower Federal order prices as well as higher manufactured product prices. Thus, the gap between the price of milk and the wholesale prices received by processors widens. At the same time, milk producers face lower prices and respond by cutting back on production, leading to lower marketings and producer revenue losses.

The decrease in the Federal minimum price for Class I milk is passed on to consumers in the form of a slightly lower retail price for fluid milk which increases consumption. However, tighter milk supply bolsters manufactured product prices and in turn lowers consumption of cheese, butter, and NDFM. Class I and Class II marketings increase, but not enough to counteract the lower prices, allowing average receipts to fall across all classes. Though prices for Class III and Class IV milk decrease under the proposed changes, the decreased consumption of the associated dairy products and the increase in Class I and Class II product consumption causes a shift in dairy product allocation, increasing the amount of milk allocated to Class II production.

*Prior Documents in This Proceeding*

*Notice of Hearing:* Issued February 5, 2007; published February 9, 2007 (72 FR 6179).

*Supplemental Notice of Hearing:* Issued February 14, 2007; published February 20, 2007 (72 FR 7753).

*Notice To Reconvene Hearing:* Issued March 15, 2007; published March 21, 2007 (72 FR 13219).

*Notice To Reconvene Hearing:* Issued May 2, 2007; published May 8, 2007 (72 FR 25986).

*Preliminary Statement*

Notice is hereby given of the filing with the Hearing Clerk of this tentative partial final decision with respect to the proposed amendments to the tentative marketing agreements and the orders

regulating the handling of milk in the Northeast and other marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act (AMAA) and applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Room 1031—Stop 9200, 1400 Independence Avenue, SW., Washington, DC 20250–9200, by the August 19, 2008, deadline. Six (6) copies of the exceptions should be filed. Comments may also be submitted at the Federal eRulemaking portal: *http://www.regulations.gov*.

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Northeast and other marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The proposed amendments set forth below are based on the record of the first session of a public hearing held in Strongsville, Ohio, on February 26–March 2, 2007, pursuant to a notice of hearing issued February 5, 2007, published March 21, 2007 (72 FR 13219); a second session of a public hearing held in Indianapolis, Indiana, on April 9–13, 2007, pursuant to a reconvened hearing notice issued March 15, 2007, published March 21, 2007 (72 FR 13219); and a third session of a public hearing held in Pittsburgh, Pennsylvania, on July 9–11, 2007, pursuant to a reconvened hearing notice issued May 2, 2007, published May 8, 2007 (72 FR 25986).

The material issues on the record of the hearing relate to:

1. Amending the product-price formulas used to compute Class III and Class IV prices.

2. Determination of Emergency Marketing Conditions.

*Findings and Conclusions*

1. Amending the product-price formulas used to compute Class III and Class IV prices

This tentative final decision adopts on an interim basis, a proposal published in the hearing notice as Proposal 1 which seeks to amend the manufacturing allowances for butter, cheese, nonfat dry milk (NFDM) and dry whey using the most currently available data, and a portion of Proposal 6 that increases the butterfat yield in the butterfat price formula. Specifically, this decision adopts the following manufacturing allowances: Cheese—$0.2003 per pound, butter—$0.1715 per pound, NFDM—$0.1678 per pound and dry whey—$0.1991 per pound. This decision also increases the butterfat yield factor in the butterfat price formula from 1.20 to 1.211.

The Federal Milk Marketing Order (FMMO) program currently uses product-price formulas to compute prices handlers must account for in the marketwide pooling of milk used in the four classes of products. These formulas rely on the price of finished products to determine the minimum classified prices handlers pay for raw milk. In addition, the Class III and Class IV prices form the base from which Class I and Class II prices are determined. This end-product pricing system was implemented on January 1, 2000 (published February 12, 1999; 64 FR 70868).

The product-price formulas are computed by using component values from National Agricultural Statistic Service (NASS) surveyed prices of manufactured dairy products. The pricing system determines butterfat prices for milk used in products in each of the four classes from a surveyed butter price; protein and other solids prices for milk used in Class III products from surveyed cheese and dry whey prices; and a nonfat solids price for milk used in Class II and Class IV products from surveyed nonfat dry milk product prices. The skim milk portion of the Class I price may be derived from either the protein and other solids price, or from the nonfat dry milk price depending on the price relationships. The butterfat, protein, other solids and nonfat solids prices are all derived in a similar manner: Average NASS survey price minus a manufacturing (make) allowance times a yield factor. The yield factor is an approximation of the quantity of a specific product that can be made from a hundredweight (cwt) of milk. The yield factors were last amended on April 1, 2003 (published February 12, 2003; 68 FR 7063).

The make allowance factor represents the cost manufacturers incur in making raw milk into one pound of product. Federal milk order pricing formulas currently contain the following make allowances: Cheese—$0.1682 per pound, butter—$0.1202 per pound, NFDM—$0.1570 per pound and dry whey—$0.1956 per pound. These make allowances were adopted in 2006 (71 FR 78333) and became effective on March 1, 2007, and were determined on the basis of a California Department of Food and Agriculture (CDFA) and a Cornell Program on Dairy Markets and Policy (CPDMP) survey of manufacturing costs. The current make allowances, except dry whey, were computed by taking a weighted average of the CDFA and CPDMP surveys using National commodity production as the weights, and adjusting for marketing costs. The dry whey make allowance was computed by relying solely on the CPDMP 2005 survey and adjusting for marketing costs.

Nineteen proposals were published in the hearing notice for this proceeding. Proposals 4, 5 and 11 were withdrawn at the hearing by proponents in support of other noticed proposals. No further reference to these proposals will be made.

A proposal published in the hearing notice as Proposal 1, offered by Agri-Mark Cooperative (Agri-Mark), seeks to amend the Class III and Class IV make allowances by using the most current plant cost survey data available. Agri-Mark is a Capper-Volstead cooperative with approximately 1,400 member-owners throughout New England and New York, and operates four manufacturing plants.

Agri-Mark is also the proponent of Proposal 2 that seeks to amend the Class III and Class IV product price formulas to annually update the manufacturing allowances using an annual manufacturing cost survey of cheese, whey powder, butter, and nonfat dry milk plants (located outside of California.) The proposed amendments would grant authority to the Market Administrator to administer the survey, select the sample plants, and collect, audit, and assemble cost information. This proposal will also be addressed in a separate decision.

A proposal published in the hearing notice as Proposal 3, offered by Dairy Producers of New Mexico (DPNM), seeks to amend the manufacturing allowances contained in the Class III and Class IV product price formulas. Specifically, this proposal seeks to set the make allowances at the following levels: $0.1108 per pound for butter; $0.1638 per pound for cheese; $0.1410 per pound for NFDM; and $0.1500 per pound for dry whey. DPNM is an association of dairy producers located in New Mexico and West Texas.

DPNM is the proponent of Proposals 6, 7 and 8 that seek to amend the yield factors and the butterfat recovery rate of the Class III and Class IV product price formulas. Proposal 6 seeks to amend the butter price formula by increasing the butterfat yield factor from 1.20 to 1.211

and to amend the protein price formula by increasing the butterfat recovery rate from 90 percent to 94 percent. Proposal 7 seeks to eliminate the farm-to-plant shrink and butterfat shrink adjustments of all yield factors. Proposal 8 seeks to increase the nonfat solids yield factor from 0.99 to 1.02, and increase the protein price yield factor for cheese from 1.383 to 1.405 and for butter from 1.572 to 1.653.

Proposal 9 was offered by the International Dairy Foods Association (IDFA). Proposal 9 seeks to amend the Class III and Class IV product-price formulas by adjusting the protein price formula to reflect the lower value and reduced volume of butterfat recoverable as whey cream. IDFA is a trade association with 530 members representing manufacturers, marketers, distributors, and suppliers of fluid milk and related products.

Proposal 10 was submitted on behalf of Agri-Mark. Proposal 10 seeks to amend the Class III and Class IV product-price formulas by reducing the protein price to reflect the lower selling price of whey butter.

Proposal 12 was offered by IDFA. Proposal 12 seeks to amend the Class III and Class IV product price formulas by eliminating the 3-cent cost adjustment for cheese manufacturing of 500-pound barrels contained in the protein price formula.

Proposal 13 was offered by Dairy Farmers of America, Inc. (DFA) and the Northwest Dairy Association (NDA). Proposal 13 seeks to amend the Class III and Class IV product-price formulas by removing the barrel cheese price as a cost component of the protein price formula. DFA is a Capper-Volstead cooperative with 13,500 member-owners producing milk in 40 states. NDA is a Capper-Volstead cooperative with approximately 610 member-owners, and operates 6 manufacturing plants and 4 distributing plants in the western United States.

Proposal 14 was advanced by Agri-Mark. Proposal 14 seeks to amend the Class III and Class IV product price formulas by using a combination of the weekly NASS and CME cheese price series to determine the cheese price contained in the Class III and Class IV product-price formulas.

Proposal 15 also was offered by DPNM. This proposal seeks to replace the NASS commodity price surveys with CME commodity prices in each of the price formulas except for the other solids formula. The dry whey price in the other solids formulas would continue to be derived from the NASS dry whey price survey.

Proposal 16 was offered by National All-Jersey, Inc. (NAJ). Proposal 16 seeks to amend the Class III and Class IV product-price formulas by eliminating the other solids price and adding the equivalent value of dry whey to the protein price formula. NAJ is a breed organization with more than 1,000 members.

Proposal 17 was offered by the National Milk Producers Federation (NMPF). The proposal seeks to amend the Class III and Class IV product-price formulas to incorporate a monthly energy cost adjustment based on monthly changes in the manufacturing price indices for industrial natural gas and industrial electricity as published by the Bureau of Labor Statistics. NMPF is an association consisting of 33 dairy-farmer cooperative members representing nearly three-quarters of U.S. dairy farmers. This proposal will be addressed in a separate decision.

Proposal 18 was offered by the Maine Dairy Industry Association (MDIA). Proposal 18 seeks to amend the Class III and Class IV product-price formulas by incorporating a factor to account for any monthly spread between component price calculations for milk and a competitive pay price for equivalent Grade A milk. MDIA is an association that represents all of Maine's 350 dairy farmers.

A proposal published in a supplemental hearing notice as Proposal 20 was submitted on behalf of Dairylea Cooperative, Inc. (Dairylea). Proposal 20 seeks to amend the Class III and Class IV price formulas by establishing cost-of-production add-ons that manufacturers could include in the selling price of their products but would not be included in the determination of the NASS survey prices. Dairylea is a Capper-Volstead cooperative with 2,400 member-owners located in seven states. This proposal also will be addressed in a separate decision.

To provide order to the volume of hearing testimony and post-hearing briefs, the summary of testimony is organized as follows:

1. Make Allowances: Proposals 1, 2 and 3

2. Product Yields and Butterfat Recovery Percentage: Proposals 6, 7 and 8

3. Value of Butterfat in Whey: Proposals 9 and 10

4. Barrel Cheese Price: Proposals 12 and 13

5. Product Price Series: Proposals 14, 15 and 18

6. Other Solids Price: Proposal 16

1. Make Allowances

A witness from Cornell University (Cornell witness) testified regarding the 2006 manufacturing cost survey (2006 survey) conducted by the Cornell Program on Dairy Markets and Policy (CPDMP), to assess the manufacturing costs of plants producing cheddar cheese, dry whey, butter and NFDM. The witness did not testify in support or opposition to any proposal presented at the hearing. The witness explained that an earlier study, the CPDMP 2005 manufacturing cost survey (2005 survey), was contracted in part by USDA and was presented at a 2006 rulemaking hearing (71 FR 52502), and were factors considered by USDA in developing the make allowances that became effective March 1, 2007 (71 FR 78333). The witness said that some manufacturing plants that participated in the 2005 survey requested a new survey to reflect more current cost information.

The Cornell witness said that each of the plants that participated in the 2005 survey were asked to participate in the 2006 survey. The witness stated that 21 plants agreed to participate and of those plants 19 were deemed to have acceptable data to be included in the 2006 survey. Plants submitted data corresponding to their most recent fiscal year; most of the data observations occurred in calendar year 2006, the witness said. The data was not audited by the witness. The witness explained that if a plant produced multiple products they were asked to allocate manufacturing costs for each product. However, if they failed to do so the witness allocated costs on a per pound of solids basis in the finished product. The average manufacturing costs detailed in the study were on a per pound of finished product basis and were not adjusted for moisture content, the witness said.

The Cornell witness said that 11 cheese plants participated in the 2006 survey compared with 16 cheese plants in the 2005 survey. Eight of those plants (one classified as a large plant and the other seven as small plants) also participated in the 2005 survey; the three remaining plants that participated in the 2006 survey were asked to participate in 2005 but submitted data too late for its inclusion. The witness testified that five small cheese plants that were included in the 2005 survey opted not to participate in the 2006 survey. Of the eleven plants, the witness classified seven as small plants and the remaining four as large volume plants. The witness testified that the weighted average manufacturing cost of the 2006

cheese plant sample was $0.1584 per pound, a decrease of $0.0054 per pound from 2005. The witness said that comparing the costs for the eight plants that participated in both surveys revealed a weighted average cost increase of $0.017 per pound between the 2005 and 2006 surveys. The total pounds covered by the 2006 survey increased from approximately 60 million pounds in 2005 to nearly 119 million pounds in 2006. The Cornell witness asserted that the 2005 survey over-sampled small plants while the 2006 survey over-sampled large plants. The witness noted that the average packaging cost for cheese in the 2006 survey was only for 40-pound block production. If a plant produced barrel cheese the witness assigned it an average 40-pound block packaging cost before computing the average manufacturing costs for the entire sample.

The Cornell witness said that seven whey plants participated in the 2006 survey and their weighted average cost was $0.1976 per pound—an increase of $0.0035 per pound from the 2005 survey. According to the witness, the seven participating whey plants were associated with a cheese plant that was also included in the 2006 survey. The witness noted that 12 whey plants participated in the 2005 survey.

The Cornell witness said that four butter plants participated in the 2006 survey; three of the plants also participated in the 2005 survey. The weighted average cost of the four plants was $0.1846 per pound, an increase of $0.0738 per pound over the 2005 survey. The survey accounted for 57.6 million pounds of butter. The witness testified that significant cost allocation problems and data quality problems with the 2005 butter data were major reasons for the large increase in the weighted average cost from 2005 to 2006. The witness testified that the 2005 survey butter data was not accurate, but asserted that the allocation problems were corrected in the 2006 survey. While maintaining that the 2006 survey data was reliable, the witness said that a larger sample size would have been preferred. The witness also noted that the manufacturing costs submitted by one of the butter plants in the 2006 survey did include the cost of transporting cream from its drying plant to its butter plant.

The Cornell witness said that the 2006 survey for NFDM consisted of seven of the eight NFDM plants that participated in the 2005 survey. According to the witness, the weighted average cost of the seven plants was $0.1662 per pound, an increase of $0.0239 per pound from 2005. The witness explained that the weighted average cost increase is partially explained by increases in real costs (labor, packaging, etc.), but also partly because of a change in the methodology of indirectly allocating costs between butter and NFDM. According to the witness, there were flaws in the method used to indirectly allocate costs for NFDM in the 2005 study that resulted in understating the cost of processing NFDM. The witness claimed that an attempt was made in the 2006 survey to correct this understated processing cost. The witness did not explain the reported flawed methodology or the methodological changes for 2006. According to the witness, the 2006 survey accounted for 70.1 million pounds of NFDM, an increase of 15 million pounds.

A witness appearing on behalf of Agri-Mark testified in support of Proposals 1 and 2. The witness explained that Proposal 1 seeks to update the make allowances adopted on an interim final basis (71 FR 78333), effective March 1, 2007, using 2005 CDFA data. The witness asserted that this update would increase the butter, NFDM and cheese make allowances by $0.0014, $0.0092 and $0.0029 per pound, respectively. The witness was of the opinion that the dry whey make allowance should incorporate the 2005 CDFA data which reflects an average cost of $0.2851 per pound.

The witness reiterated Agri-Mark's position expressed in comments to the tentative final decision (71 FR 67467) that proposed adoption of the current make allowances. The witness concluded that using this weighting methodology (including a $0.0015 per pound marketing cost factor) the resulting make allowances should be: $0.1780 per pound for cheese, $0.1351 per pound for butter, $0.1510 for NFDM and $0.2090 per pound for dry whey.

The Agri-Mark witness conceded that increasing the make allowances would assist high-cost plants in covering their costs while creating a financial windfall for low-cost plants. In turn, the witness said, the low-cost plants could use the additional revenue to sell products at a lower cost, pay producers a higher price, or increase their financial returns. The witness said that any financial gains low-cost plants in the Southwest earn from a high make allowance would not harm high-cost plants in the Northeast because it is too costly to transport milk from the Southwest to the Northeast. The witness believed that competitive issues resulting from high make allowances would only arise if a low-cost plant was located next door to a high-cost plant that competes for the same milk supply.

The Agri-Mark witness advanced Proposal 2 seeking to establish an annual manufacturing cost survey, administered by USDA that would automatically update make allowances without requiring a rulemaking proceeding. On brief, Agri-Mark withdrew the automatic updating portion of this proposal. The witness explained that manufacturing input prices fluctuate in the short-run and an annual survey would ensure the timelier recognition of these fluctuations in make allowances. The witness said that the CPDMP survey should provide the basic methodology needed to conduct the survey and that any changes to the methodology should be done through the formal rulemaking process. The witness asserted that the survey should be administered by market administrator audit personnel and the plant sample, preferably larger than the CPDMP sample, should be selected by random sampling. The witness also supported auditing surveyed plants and asserted that this function should be funded by payments from the Market Administrator's administrative assessment fund. The witness said that if the survey was audited, the use of CDFA cost data would no longer be necessary in determining make allowances. The witness also supported addressing the proposed manufacturing cost survey in a recommended decision to allow for public comments.

The Agri-Mark witness was of the opinion that based on the new CPDMP survey the make allowances should be set at the higher of: (1) A level that would allow a minimum of 80 percent of the producer milk used by Class III and Class IV plants to cover their costs; or (2) a level that would allow a minimum of 25 percent of the producer milk volume used by Class III and Class IV plants in any specific Federal order annually pooling at least 4 billion pounds of milk to cover their costs. The Agri-Mark witness opposed Proposal 3.

A witness appearing on behalf of Land O'Lakes (LOL) testified in support of Proposals 1 and 2. According to the witness, LOL is a Capper-Volstead cooperative with over 3,000 members that own 4 manufacturing plants in the United States. The witness supported updating the current make allowances with 2005 CDFA manufacturing cost data as advanced in Proposal 1. The witness advocated that the audited CDFA whey manufacturing cost data be included in the whey make allowance computation. The witness asserted that the make allowances should be recalculated by weighting the CDFA and

CPDMP data by the survey sample volumes, not national product volumes which the witness argued was not statistically valid. The witness concluded that the new make allowances (using LOL's proposed weighting) should be as follows: $0.1780 for cheese; $0.2090 for dry whey; $0.1560 for NFDM; and $0.1351 for butter.

The LOL witness supported the annual cost survey offered in Proposal 2, with technical modifications. The witness stated that the authority for collecting plant cost data should be granted to the AMS Administrator, that the plant sample be limited to plants located outside of California that receive pooled (producer) milk, and that the survey results are combined with the CDFA data to determine appropriate Federal order make allowance levels. The witness opposed the portion of Proposal 2 that would set make allowances at a level that would cover the cost of manufacturing for the highest cost Federal order marketing area. The witness said that classified prices are determined on a national, not a regional basis, and therefore relying on regional costs is inappropriate. The witness was of the opinion that USDA should clearly identify the target product volume and percentage of plants that should be covered by new make allowances that result from this proceeding.

The LOL witness opposed Proposal 3 seeking to exclude CDFA manufacturing cost data when computing new make allowances. The witness argued that since 2000 the Department has continuously considered CDFA manufacturing cost data when determining new make allowance levels and asserted that there is no justification to modify that policy. The witness elaborated that classified prices are determined using a national survey that includes California plants and therefore including California plant costs when determining make allowance levels is appropriate.

A witness testifying on behalf of Michigan Milk Producers Association (MMPA) testified in support of Proposals 1 and 2, and in opposition to Proposal 3. According to the witness, MMPA is a Capper-Volstead cooperative with approximately 2,400 members that markets 3.5 billion pounds of milk annually and operates 2 manufacturing plants. The witness offered support for Proposal 1 to update the make allowances based on the most currently available data, specifically the 2005 CDFA manufacturing cost data. The MMPA witness stressed support for Proposal 2's annual survey of manufacturing costs that would be administered by AMS through its market administrators.

A witness appearing on behalf of NDA testified regarding the CPDMP 2005 survey that was used to determine current make allowance levels. The witness said that NDA participated in the study and that costs for its NFDM plants were incorrectly allocated. The witness estimated that NDA's NFDM production represented approximately 54 percent of the total volume contained in the CPDMP 2005 survey for NFDM. In the survey, cream costs were allocated on a butterfat solids basis rather than as a percent of total solids, the witness said. However, according to the witness NDA's NFDM plants separate the cream that is stored in silos to be sold or transported to its butter manufacturing plant resulting in an over-allocation of costs to cream in the CPDMP 2005 survey. According to the witness, this misallocation inaccurately lowered NDA's NFDM manufacturing costs by $0.036 per pound. The witness asserted that after correcting for this error, the CPDMP 2005 survey for NFDM weighted average cost should been $0.019 per pound higher. The witness urged USDA to issue an emergency decision addressing make allowances because of the errors contained in the CPDMP 2005 survey.

A post-hearing brief was filed on behalf of Agri-Mark, Foremost Farms USA, LOL, MMPA, NDA and Associated Milk Producers, Inc., hereinafter referred to as Agri-Mark, et al. The members of Agri-Mark, et al., are all Capper-Volstead cooperatives who market their members' milk in the Federal order system and operate manufacturing plants.

The Agri-Mark, et al., brief emphasized its support for product-price formulas because, in their opinion, no truly independent competitive price series exists to determine milk prices. The brief summarized the evolution of the Federal order pricing system and asserted that USDA's past policy has been to set make allowances at levels that cover the processing costs for most Federal order plants. The brief expressed the opinion that USDA deviated from this policy when determining current make allowance levels.

The Agri-Mark, et al., brief supported adoption of Proposal 1 and argued that make allowances should be updated using the 2005 CDFA and the CPDMP 2006 surveys. Agri-Mark, et al., was of the opinion that USDA should continue to use the same national product volume weighting methodology that determined the current make allowances, incorporate CDFA whey cost data, use the CPDMP 2005 survey cheese plant population average cost instead of the sample average cost and continue to include a marketing cost factor of $0.0015 per pound in each make allowance.

In their post-hearing brief, Agri-Mark, et al., proposed that the cheese make allowance be set at $0.2154 per pound. Agri-Mark, et al., wrote that the CPDMP 2005 survey cheese plant population average of $0.2028 per pound was the most representative of average size plants and therefore it is the best available information to determine an appropriate cheese make allowance. Agri-Mark, et al., endorsed the methodology explained in the IDFA brief that derived a cheese make allowance of $0.2154 per pound.

The Agri-Mark, et al., brief proposed a dry whey make allowance of $0.2080 per pound by combining the 2005 CDFA and the CPDMP survey of 2006 weighted average costs. Using this same methodology, the brief proposed a butter make allowance of $0.1725 per pound and the NFDM make allowance of $0.1782 per pound (though stipulating that the CDFA medium-sized plant cost should be used for NFDM.) The brief summarized the Cornell witness' testimony regarding the errors with the 2005 butter and NFDM survey methodology and concluded that the current make allowances that were determined with this data are unrepresentative of actual costs. Agri-Mark, et al., requested that Proposal 1 be adopted on an emergency basis to rectify the current unrepresentative make allowances.

In their brief, Agri-Mark, et al., expressed support for the portion of Proposal 2 that would authorize USDA to develop and conduct periodic manufacturing cost surveys of plants located outside of California. The brief explained that this data could then be relied upon in future rulemaking proceedings to amend the product price formulas.

A witness testified on behalf of DPNM, Select Milk Producers, Inc. (Select), and Continental Dairy Producers, Inc. (Continental). Hereinafter, these entities will be referred to as DPNM, et al. The witness said that Select and Continental are Capper-Volstead cooperatives whose members are located in New Mexico, Texas, Kansas, Ohio, Michigan and Indiana. According to the witness, the DPNM, et al., testimony was endorsed by Lone Star Milk Producers and Zia Milk Producers, Inc., who are also Capper-Volstead cooperatives.

The DPNM, et al., witness testified in support of Proposal 3. The witness was

of the opinion that CDFA cost data should not be used to determine new make allowance levels because the data are only representative of California manufacturing plants which the witness asserted have higher manufacturing costs than the rest of the country. The witness testified that CDFA data had been utilized in the past when make allowances were determined using Rural Business Cooperative Service (RBCS) cost data because the audited CDFA data broadened the available data and was used to verify the information contained in the RBCS study. However, the witness insisted that the CPDMP cost surveys are far more representative of the population of manufacturing plants and should now be relied upon as the sole determinant of make allowances.

The DPNM, et al., witness testified that make allowances should be set at the following levels: $0.1108 per pound for butter; $0.1638 per pound for cheese; $0.1410 per pound for NFDM; and $0.1500 per pound for dry whey. The witness stated that except for dry whey, the proposed make allowances are identical to the weighted average costs contained in the CPDMP 2005 survey. The witness proposed that the dry whey make allowance be determined by adding $0.0090 per pound to the NFDM make allowance to account for the additional energy needed to produce dry whey. The witness estimated that if the DPNM, et al's., proposed make allowances are adopted, blend prices would increase by $0.22 per cwt.

A second witness, a dairy accountant and dairy farmer appearing on behalf of DPNM, et al., testified regarding dairy farm operating costs, accounting, and business analysis of large modern dairy farm operations. According to the witness, the firm provides accounting and other business services to dairy producer operations in 27 states whose production volume represents about 10 percent of the milk produced in the United States. The witness testified that based on data collected during the 1990's, large dairy farms in six Western states had an average annual net profit per cwt of $1.31. The witness testified that based on 10 years' worth of client data, dairy farms in the west and eastern states must earn a net income of $1.50 and $2.00 per cwt, respectively, for a dairy farmer to collect a salary and retire debt. The witness predicted that for 2007 producer client average gross income of $15.51 per cwt and an average cost of production of $15.17 per cwt, would yield an average net profit of $0.34 per cwt. The witness said that this was far from the $1.50 per cwt net profit needed for their clients to reduce debt or cover living expenses.

The second DPNM, et al., witness stated that low milk prices in 2005 reduced dairy farm client income to an average of $206 per cow. The witness noted that during the 1990s, average production cost per cwt in western states was $11.87 but this has risen to $13.50 for 2004–2005. The witness testified that rising input costs combined with lower milk prices in 2004–2005 made large-scale, highly efficient dairy farming unprofitable, even in low-cost operating areas such as west Texas and New Mexico. The witness provided additional testimony to show that increasing make allowances depressed dairy farmer income during a period of increasing costs and reduced opportunities for profitability. The witness supported this testimony with 2006 client data showing that a farm milking 1,800 cows would have lost $284,000. The witness provided detailed client data showing that the major higher-cost milk production factors during 2005 and 2006 were increased energy and feed costs.

A third witness, a dairy farmer, appearing on behalf of DPNM, et al., testified in support of Proposal 3. The witness operates a farm in New Mexico that milks approximately 3,800 cows and testified that they have been receiving $1.50 cwt below the Southwest order's blend price because of hauling costs. The witness said that over the last few years any increase in producer milk prices has been consumed by rapidly increasing production costs. The witness supported all proposals submitted by DPNM and articulated opposition to adoption of Proposals 1 and 2.

The DPNM, et al., post-hearing brief explained its opposition to all other proposals included in the hearing to adjust the make allowances was based on three principles: (1) The data used to determine the appropriate level of manufacturing allowances for establishing Federal order prices should be drawn from plants operating within the Federal order system; (2) adjustments to Federal order pricing regulations should always be subject to formal rulemaking; and (3) make allowances should be set at a level deemed appropriate by USDA, after taking into consideration all statutorily required factors and current milk marketing conditions, rather than prescribed geographic or volumetric factors. The brief explained why the CPDMP 2005 survey is the best data available and met their criteria for use in establishing Federal order make allowances and why the 2006 survey is flawed and should not be relied upon in determining make allowances.

A witness appearing on behalf of IDFA testified in support of Proposal 1 and the annual manufacturing cost survey advanced in Proposal 2. However, the witness did not support adoption of the portion of Proposal 2 that would result in the automatic update of make allowances. The witness requested emergency adoption of Proposal 1 and this request was reiterated in IDFA's post-hearing brief.

The IDFA witness testified that the product-price formulas determine the minimum prices manufacturers must pay for their raw milk and that those whose costs exceed the fixed make allowances in the price formulas are unable to recoup their higher costs. The witness asserted that any increase in the manufacturer's end product prices would only result in an increase in the minimum raw milk price they must pay. According to the witness, manufacturers also face financial problems if any of the product-price formula factors are incorrect. The witness illustrated by example the impacts of both inaccurate product prices and inaccurate make allowances on manufacturers.

The IDFA witness testified that before January 1, 2000, the Federal order system utilized a market-based pricing system which automatically reflected current market conditions. However, under the end product pricing system, market factors (e.g. yields, butterfat retention) are set at a point in time and can only be changed through the formal rulemaking process, the witness said.

The IDFA witness espoused that setting make allowances too high or yield factors too low may result in low milk prices but that should not be of concern to USDA. In this regard, the witness was of the opinion that the Federal order system should only determine minimum prices and allow market responses through over-order premiums to remedy any regulated prices that are too low. However, the witness conceded that if a plant can manufacture products at costs lower than those reflected by the price formula make allowance levels then the difference could be used to make plant investments, secure a larger milk supply to the detriment of higher-cost plants or return higher margins to plant owners.

The IDFA witness testified in support of updating the current make allowances with the most current cost data available (Proposal 1). The witness was of the opinion that the CDFA dry whey cost data should be a factor in determining a new dry whey make allowance for Federal orders. The

witness asserted that the CDFA average dry whey plant size more closely resembled the NASS average dry whey plant size than did the CPDMP survey. Furthermore, the witness asserted that the CDFA dry whey data was skewed toward low cost plants, not high cost plants as asserted by USDA. The witness maintained that using the CDFA data in determining the dry whey make allowance would not cause the make allowance to be set too high. The witness concluded that both the CDFA and CPDMP dry whey weighted average costs should be used to determine the dry whey make allowance and reiterated this position in its post-hearing brief.

Also in its post-hearing brief, IDFA stated that any decision made by USDA on the Class III and Class IV pricing formulas should not directly consider hearing testimony regarding dairy farmer cost-of-production. The brief asserted that it is already captured indirectly through the supply and demand for manufactured products and therefore should not be given additional consideration in this proceeding.

The IDFA witness testified that USDA needs to correct for CPDMP's stratified cheese plant sampling which in IDFA's opinion over-represents low-cost cheese plants. The witness highlighted testimony of the Cornell witness which compared the eight cheese plants that participated in both surveys revealing an average manufacturing cost increase of 1.7 cents per pound. IDFA was of the opinion that since the same cheese plant sample was not used in the two CPDMP surveys, the most appropriate method for determining a new cheese make allowance would be to use the weighted average cost from the 2005 survey ($0.2028) plus 1.7 cents for a total of $0.2198 per pound. In its brief, IDFA concluded that the new make allowances should be set no lower than the following: $0.2154 per pound for cheese; $0.1725 per pound for butter; $0.1782 for NFDM; and $0.2080 for dry whey.

The IDFA witness supported adopting an annual manufacturing cost survey as contained in Proposal 2 but opposed any automatic updating of make allowances. The witness said that an annual survey would provide industry participants information regarding trends in plant costs and such information could be used in future hearings to adjust make allowances. However, the witness did not support automatically updating make allowances outside of the hearing process because it would prohibit industry input regarding how the data should be utilized. IDFA reiterated these views in its post-hearing brief.

The IDFA witness testified in opposition to Proposal 3. The witness argued that audited CDFA data should continue to be included when determining new make allowance levels. The witness asserted that the elimination of the CDFA data would result in lower make allowances that in their opinion are already too low. In its post-hearing brief, IDFA asserted that the proponents of Proposal 3 had presented no evidence that manufacturing costs have decreased to levels similar to the manufacturing costs reflected in make allowances that were effective prior to February 1, 2007.

A witness appearing on behalf of Lactalis American Group, Inc. (Lactalis) testified in support of Proposal 1 and in opposition to Proposal 3. According to the witness, Lactalis operates six cheese plants in the United States. The witness expressed support for IDFA's positions. The witness said that the Class III and Class IV product-price formulas should be amended to give more flexibility to market participants in establishing market prices. The witness was of the opinion that increasing make allowances by adopting Proposal 1 would give processors the flexibility to make short-term adjustments in response to changing market conditions. The witness argued that the increasing milk supply, not make allowances which are too high, is the cause of low milk prices received by dairy farmers. Therefore, the witness opposed any proposals that would result in lower make allowances.

A witness appearing on behalf of Leprino testified in opposition to Proposal 3 stating that there is no basis to set make allowances below current levels. According to the witness, Leprino operates nine manufacturing plants throughout the United States that produce Italian style cheeses. The post-hearing brief filed by Leprino expressed support for the make allowances proposed in IDFA's post-hearing brief. Leprino was of the opinion that make allowances should be set no lower than the following: $0.2154 for cheese; $0.2080 for dry whey; $0.1725 for butter; and $0.1782 for NFDM.

A witness appearing on behalf of Saputo Cheese USA (Saputo), a dairy manufacturer, testified in support of IDFA's positions. The witness testified that Saputo opposed any proposal which would add complexity to the Federal milk order system. The witness supported updating the current make allowances to reflect the most current available data as sought in Proposal 1 and that updated make allowances for dry whey should use CDFA data.

A post-hearing brief filed on behalf of Twin County Dairy (Twin County), an Iowa-based cheese manufacturer, expressed support for the proposals offered by IDFA and Agri-Mark that seek to increase make allowances. However, the brief asserted that the proposals do not go far enough to ensure that medium-sized plants such as those operated by Twin County remain profitable. The brief argued that the proposed make allowances are heavily weighted toward large, low-cost plants and their adoption, especially the dry whey make allowance, would cause financial hardship on many cheese manufacturing plants that are similar in size to Twin County. Twin County insisted that even though product-price formulas are applied identically to large and small plants, USDA should conduct a regulatory impact analysis because in Twin County's opinion, product-price formulas have a disproportionate impact on small businesses compared with larger entities that may benefit from advantages of economies of scale.

A witness appearing on behalf of HP Hood LLC (HP Hood) testified in opposition to Proposals 1, 2 and 3. According to the witness, HP Hood is a manufacturer of Class I and Class II dairy products that are distributed nationally. The witness opposed Proposals 1, 2 and 3 because their adoption would change the Class III and Class IV milk pricing formulas that in turn are used to determine the Class I and Class II prices that HP Hood pays for its raw milk supply. The witness opposed adoption of any proposal that would result in the automatic or periodic updating of the Class III and Class IV pricing formulas arguing that such updates should be made through the formal rulemaking process.

A witness appearing on behalf of NAJ offered an amendment to Proposal 2. The witness said the amendment would expand the manufacturing cost survey to include gathering manufacturing cost data for whey protein concentrates (WPC's) and lactose. This inclusion was reiterated in NAJ's post-hearing brief.

A Michigan dairy farmer testified regarding the profitability of dairy farmers and in opposition to adopting any proposals that would increase make allowances. The witness was opposed to increasing make allowances until the price formulas are amended to recognize a farmer's cost of production. The witness stated that on-farm fuel costs were $35,000 in 2004 and had risen to $70,000 in 2006. The witness asserted that there are many Michigan dairy farmers considering leaving the dairy industry because of increased costs and low milk prices. The witness also

expressed the opinion that NASS NFDM prices were misreported or under-reported during the prior 12 months.

A post-hearing brief submitted on behalf of O–AT–KA Milk Products Cooperative, Inc., (O–AT–KA) expressed support for Proposals 1 and 2, and opposition to Proposal 3. According to the brief, O–AT–KA is a Capper-Volstead cooperative located in New York and its plant manufactures 600 million pounds of milk annually into butter and NFDM. The brief stressed that changes to the make allowances and other factors of the product price formulas need to accurately represent the current manufacturing market. O–AT–KA expressed support for Proposal 1 and was of the opinion that the CPDMP 2006 survey should be considered a minimum when setting make allowances. According to the brief, O–AT–KA's plant manufacturing costs are higher than the CPDMP 2006 survey weighted average NFDM cost. O–AT–KA also wrote that they compete directly with California plants and requested that USDA should keep the Class IV and California Class 4a prices aligned if it recommends any changes to the product price formulas. O–AT–KA noted support for Proposal 2, but not the portion that calls for automatically updating make allowances. The O–AT–KA brief opposed adoption of Proposal 3 because it would inhibit their ability to provide balancing services to the market and a fair return to its member-owners.

A joint post-hearing brief filed on behalf of Dairylea and DFA, hereinafter referred to as Dairylea, et al., opposed adoption of Proposals 1 and 2. The brief opined that the current make allowances should be used with the addition of the energy adjustor advanced in Proposal 17 and cost add-ons described in Proposal 20. The Dairylea, et al., brief supported the NAJ modification of Proposal 2 to expand the NASS product price survey to include information on whey protein concentrates.

2. Product Yields and Butterfat Recovery Percentage

A witness appearing on behalf of DPNM, et al., testified in support of Proposals 6, 7 and 8. The witness testified that before January 1, 2000, the Federal milk order price discovery mechanism took into account dairy farmers' cost of production when determining minimum regulated prices. If farmers' costs of production increased, the witness said that manufacturers were able to pay farmers higher prices because on-farm production costs could be passed on to their customers. However, under the current pricing system, the witness argued, minimum prices to dairy farmers are based on the average prices of dairy products sold nationally during the month. As a result, the witness asserted, dairy farmers have experienced financial hardship because they are unable to pass on their higher costs to the marketplace.

The DPNM, et al., witness was of the opinion that Proposals 6, 7 and 8 should be considered jointly as coordinated adjustments to the various yield factors to ensure that dairy farmers receive a fair minimum price. In its post-hearing brief, DPNM, et al., added that Proposals 3 and 15 also should be considered in conjunction with Proposals 6, 7 and 8 because together they address all parts of the current product price formulas.

The DPNM, et al., witness testified in support of Proposal 6 seeking to increase the butterfat yield factor from 1.20 to 1.211. The witness said that this change would correct for a mathematical error in calculating farm-to-plant shrinkage. The witness explained that in the 2002 final decision that established the current farm-to-plant shrinkage factor, shrinkage allocated to butterfat loss should have been calculated on a per cwt of milk basis, not on a per pound of butterfat basis. DPNM, et al., noted on brief that no witnesses at the hearing disagreed with this assertion.

The DPNM, et al., witness also offered a modification to Proposal 6 seeking to amend the butterfat credit in the protein price. The witness explained that when USDA adjusted the butterfat yield factor in the protein price formula to 1.572 in 2002 to account for farm-to-plant shrinkage, the butterfat credit portion of the protein formula was not adjusted to an equivalent of 89.4 percent. The witness estimated that increasing the butterfat yield factor from 1.20 to 1.211 and decreasing the butterfat credit portion of the protein formula from 90 to 89.4 percent would, on average, have increased blend prices by $0.07 per cwt.

The DPNM, et al., witness testified in support of Proposal 7 seeking to eliminate the farm-to-plant shrinkage factor. The witness was of the opinion that accounting for farm-to-plant shrinkage allows producers and processors to mask inefficiencies. According to the witness, DPNM, et al., farm-to-plant shrinkage is well below the 0.25 percent assumed in the pricing formulas. The witness attributed lower farm-to-plant shrinkage to large producers who ship tanker loads of milk. The witness insisted that shrinkage is not a result of milk solids being unrecoverable from the milk tanker and hoses but rather the result of imprecise measuring at the farm.

The DPNM, et al., witness testified that the yield factors in the product pricing formulas should be amended to reflect current technology. The witness proposed that the protein price formula be changed to reflect a 94 percent butterfat recovery in cheese manufacturing, that the casein percentage in milk be increased to 83.25 percent, and that the butterfat-to-protein ratio in cheese be changed to 1.214 to reflect average producer tests. According to the witness, the adoption of a 94 percent butterfat recovery rate also implies that the butterfat yield factor in the protein price should be increased from 1.587 to 1.653 as proposed in Proposal 8.

The DPNM, et al., witness estimated that increasing the butterfat recovery rate from 90 to 94 percent would result in a 10.5-cent increase in producer blend prices. The witness said that the currently assumed 90 percent butterfat recovery rate is based on technology that is more than 20 years old while new technology enables manufacturers to achieve a much higher recovery rate. Using CDFA plant cost survey data for 2002 through 2005, the witness used a mass balance analysis to estimate the flow of milk components through a cheddar cheese plant and the allocation of milk components to products and by-products. Through this analysis the witness derived a 94 percent butterfat recovery rate for plants participating in the CDFA cost survey. The witness estimated the butterfat recovery rate for cheese plants that participated in the 2004 RBCS cost study to be 95.25 percent for all cheeses.

The DPNM, et al., witness testified in support of Proposal 8. The witness argued that the percentage recovery factor for casein in milk should be increased from 82.2 to 83.2, to reflect average producer tests, which would result in a 2.3-cent per cwt increase in producer blend prices. However, in their post-hearing brief, DPNM, et al., stipulated that a casein recovery factor of 83.10 percent was appropriate. DPNM, et al., explained in brief that changing the casein recovery factor would raise the protein yield factor from 1.383 to 1.405; and increasing the butterfat recovery rate to 94 percent would change protein price formulas by increasing the protein to butterfat ratio from 1.17 to 1.214 and increasing the butterfat yield from 1.587 to 1.653. These changes would update the protein price formula to reflect current industry recovery standards and return revenue to producers who, according to the

DPNM brief, et al., have received lower pay prices.

The DPNM, et al., witness estimated that increasing the butterfat-to-protein ratio from 1.17 to 1.24 would result in a 3.7-cent increase in producer blend prices. The witness said that the current butterfat-to-protein ration of 1.17 represents standardized milk tests at 3.5 percent butterfat and 2.9915 percent true protein. However, according to the witness the 2004 average producer milk test for milk contained in the 2004 RBCS study was 3.69 percent butterfat and 3.04 percent true protein which more accurately represents' a butterfat-to-protein ratio of 1.214.

The DPNM, et al., witness concluded that the current butterfat to protein ratio of standardized milk undervalues more than one half of the producer milk marketed on Federal orders. The witness also stated that since plants purchase milk at test, not at the standardized values, it is more appropriate to use weighted average milk tests in the pricing formulas. In brief, DPNM asserted that standardized milk tests are lower than average producer tests and result in yield factors in the protein price formula that are artificially low which in turn understates what the protein price paid to producers should be.

The DPNM, et al., witness concluded that if the DPNM, et al., proposals to change the butterfat recovery percentage, butterfat-to-protein ratio, and true protein in casein percentage are adopted, producer blend prices would increase by $0.20 per cwt.

The DPNM, et al., witness also testified that the NFDM yield factor should be increased from .99 pounds of NFDM per pound of solids nonfat (SNF) to 1.02 pounds of NFDM per pound of SNF. The witness stressed that according to current FDA standards of identity, one pound of SNF can produce as much as 1.05 pounds of NFDM. The witness elaborated that NFDM is often sold with approximately 5 percent moisture, whereas SNF is assumed to contain zero percent moisture. Therefore, concluded the witness, the current formula is incorrect in assuming that one pound of SNF actually produces less than one pound of NFDM. The witness referred to various studies conducted by CDFA and CPDMP that demonstrated a combined NFDM and buttermilk powder yield in excess of 1.025 pounds per pound of SNF. The witness was of the opinion that after taking into account the lower market value of buttermilk powder, a NFDM yield of 1.02 is appropriate. The witness estimated that this proposed change would increase producer blend prices by 4 cents.

The witness concluded that if all the DPNM yield changes were adopted, blend prices would increase by $0.42 per cwt and on average, producers would receive $9,787 in additional income per year. The witness was of the opinion that any adjustment in yield factors should also be accompanied by an adjustment in make allowances because the two are inherently linked.

A witness appearing on behalf of Leprino testified in opposition to Proposals 6, 7 and 8. The witness opposed the portion of Proposal 6 seeking to increase the butterfat recovery rate in cheese manufacturing from 90 to 94 percent. In the witness' opinion, the proponents for increasing the butterfat recovery rate provided no evidence to support this increase aside from hypothetical examples. The witness also opposed the amendment to Proposal 6 to decrease the butterfat credit in the protein formula below the 90 percent butterfat recovery rate that is assumed in the cheese yield formula. The witness explained that this would cause cheese manufacturers to pay for more butterfat than is actually contained in the raw milk. The witness agreed that there is an error regarding how butterfat shrink is applied in the cheese yield formula. However, the Leprino witness did not support increasing the cheese butterfat yield factor to 1.211 because of milk component losses that occur in cheesemaking that are not recognized in the formula.

The Leprino witness testified in opposition to elimination of the farm-to-plant shrinkage factor advanced by Proposal 7. The witness said that the loss of milk when shipping from the farm to the plant is well documented and adjusting the Class III price to reflect this loss is appropriate. The witness said that Leprino experiences farm-to-plant milk losses of approximately 0.25 percent. The witness disagreed with the rationale offered by the proponent that increasing farm sizes and single producers shipping whole tanker loads of milk has remedied farm-to-plant shrinkage. The Leprino witness testified that deliveries to the Leprino plant in Waverly, New York, often have the milk of 15 to 18 producers per tanker. The witness argued that milk losses from farm-to-plant remain a reality that should continue to be acknowledged in the Class III price formula.

The Leprino witness testified in opposition to increasing the cheese protein yield factor from 1.383 to 1.405 (Proposal 8.) The witness said that the proponent's assumption of an 83.25 percent casein in true protein content that would lead to a cheese protein yield factor of 1.405 was not based on actual laboratory casein tests. Leprino's post-hearing brief reiterated its opposition to Proposals 6, 7 and 8.

A witness appearing on behalf of IDFA testified in opposition to proposals seeking to increase yield factors (Proposals 6, 7 and 8). The witness was of the opinion that the yield factors should actually be decreased to reflect in-plant shrinkage and the sale of lower-valued products such as whey cream and buttermilk. In its post-hearing brief, IDFA espoused that proponents of increasing yield factors made erroneous assumptions. The brief stated that hearing evidence documents that farm-to-plant losses are a marketplace reality and should continue to be recognized in the product price formulas. The brief also argued that hearing evidence does not support proponent's claim that a 94 percent butterfat recovery rate is achievable by most cheese manufacturing plants. Lastly, the brief insisted that the 83.25 percent casein in true protein assumed by the proponents is not based on any actual milk tests.

A food technologist witness appearing on behalf IDFA testified regarding the cheese manufacturing process and specifically about cheese production at Alto Dairy Cooperative (Alto Dairy) during 1985—2003. The witness discussed the evolution of cheese processing technology and testified that the greatest loss of milkfat during the cheese making process occurs during the cutting of the coagulum. The witness estimated that in moving from using traditional open vats to newer horizontal enclosed vats, the loss of milkfat during the cutting of the coagulum was reduced from 9.6 percent to 6 percent. However, the witness said, this does not account for losses during other stages of the cheesemaking process. The witness was of the opinion that the industry average butterfat recovery rate in cheddar cheese is approximately 90 percent.

A witness appearing on behalf of Kraft Foods (Kraft) testified in support of the positions and proposals advocated by IDFA. According to the witness, Kraft purchases and manufacturers dairy products and operates numerous plants located throughout the country.

The Kraft witness opposed eliminating the farm-to-plant shrinkage factor in the Class III price formula (Proposals 7 and 8). The witness said that Kraft manufacturing plants experience farm-to-plant milk shrinkage and that this factor should continue to be acknowledged in the price formulas

so the butterfat recovery percentages and yields are not arbitrarily inflated.

A witness appearing on behalf of Davisco Foods (Davisco) testified as being unable to use whey cream in standardized full-fat cheddar production. The witness explained Davisco sells whey cream to a butter manufacturer at a price lower than that reflected in the Class III pricing formula. According to the witness, Davisco owns and operates manufacturing plants in Idaho, Minnesota and South Dakota.

A witness appearing on behalf HP Hood opposed adoption of increasing yield factors. According to the witness, the proposed yield factors are not reflective of industry data provided in record testimony. Furthermore, the witness said, the shrinkage factor should remain in the pricing formulas and claimed that HP Hood experiences an average total shrinkage (farm-to-plant and in-plant loss) of 1.5 percent.

A witness appearing on behalf of LOL testified in opposition to Proposal 6. The witness asserted that when determining the current farm-to-plant shrinkage factor USDA did not clearly state if the butterfat loss was based on product pounds or cwt of milk. The witness said that an increase in the butterfat yield would increase the raw milk costs of manufacturers who already contend with a make allowance that does not cover their cost of processing. The witness opposed increasing the butterfat recovery percentage to 94 percent and revealed that the LOL cheese plant in Kiel, Wisconsin, recently experienced an average annual cheese yield of 10.21 pounds per cwt. According to the witness, assuming a 90 percent butterfat recovery rate and applying the plant's average milk tests, the Van Slyke formula estimates a cheese yield of 10.16 pounds. The witness indicated that the theoretical Van Slyke result and observed plant yield validates the continued use of the 90 percent butterfat recovery rate in the Class III price formula.

The LOL witness also testified in opposition to Proposals 7 and 8 seeking to amend the yield factors by eliminating farm-to-plant and butterfat shrinkage factors. The witness said proponents' claim that minimal comingled milk in the Florida, Southwest, Arizona and Pacific Northwest orders fails to recognize that comingled milk in the Northeast and Upper Midwest is commonplace as the milk of 10 or more producers is commonly comingled on a single load. According to the witness, this makes farm-to-plant shrinkage between farm and plant weights inevitable. The witness indicated that in 2006, the LOL butter and NFDM plant in Carlisle, Pennsylvania, experienced an average difference of 0.343 percent between farm and plant weights and an 0.511 percent butterfat shrinkage. The witness insisted that the LOL shrinkage percentages validate the continued incorporation of farm-to-plant and butterfat shrinkage factors in the pricing formulas.

A witness appearing on behalf of MMPA testified in opposition to Proposal 7 seeking to eliminate the farm-to-plant shrinkage factor. The witness elaborated that even though MMPA pays its farmers based on farm weights and tests, some milk solids are lost during transportation of milk from the farm to the plant. According to the witness, MMPA plants experience approximately a 0.3 percent loss of milk from farm-to-plant. Without the farm-to-plant shrinkage factor in the product price formulas, the witness said that MMPA would have to pay farmers for milk that is lost in transport and cannot be manufactured into a saleable product.

The MMPA witness also opposed Proposals 6 and 8 that seek to amend the Class IV NFDM and butter yield factors. The witness provided evidence that MMPA experiences butter and NFDM plant yields that are slightly lower than those used by the Class IV formula. The MMPA witness claimed that their yields typically generate a milk value of $11.11 per cwt, while the assumed yields in the product price formulas generate a milk value of $11.06 per cwt. The witness asserted that this $0.05 per cwt advantage is eliminated because of the off-grade products it produces and sells at discounted prices. The witness concluded that the current Class IV yield factors are appropriate and that the current calculation is superior to the complicated alternatives in Proposals 6, 7 and 8.

A witness appearing on behalf of Foremost testified regarding cheese production at Foremost's manufacturing plants. The witness entered a declaration for the record describing the types of cheese produced by Foremost and the specific butterfat retention rate achieved at its cheese manufacturing plant in Marshfield, Wisconsin. Using a mass balance analysis, the witness stated that in 2006 the Marshfield plant had an average butterfat retention rate of 90.25 percent. The witness said that Foremost considered investing in more modern cheese vats that would yield a higher butterfat retention rate but chose not to do so because it would take at least 13 years to recoup any return on such a large investment.

The Agri-Mark, et al. post-hearing brief expressed opposition to the adoption of Proposals 6, 7 and 8. The brief argued that the proponent's methodology in computing product yields was flawed because it ignored that milk solids and/or cream are sometimes added to farm milk during processing resulting in increased vat yields. Therefore, Agri-Mark, et al., concluded that the product yields advanced in Proposals 6 through 8 are not representative of the volume of products that can be produced from a hundredweight of milk. Agri-Mark, et al., also took exception to proponent's statements that dairy farmers are paying for the costs of new plant equipment designed to increase yields through increased make allowances and reduced producer income. Agri-Mark, et al., argued that enhanced yields increase production thus lower manufacturing costs per pound of product from which make allowances are derived. Agri-Mark, et al., also opposed the elimination of a farm-to-plant shrinkage factor used in the product price formulas.

The Agri-Mark, et al., brief stated that increasing the butterfat recovery rate from 90 percent to 94 percent is not justified. Agri-Mark, et al., insisted that the proponent's claim that cheese plants recycle their whey cream into the cheese vat and are then able to achieve a 94 percent butterfat recovery was contradicted by many witnesses at the hearing. Agri-Mark, et al., also wrote that the record lacks sufficient evidence to justify increasing the NFDM yield factor from .99 to 1.02. The brief supported USDA's reasoning for relying on the current NFDM yield factor and said that the farm-to-plant shrinkage factor is still valid.

The post-hearing brief filed on behalf of Dairylea, et al., agreed with proponents of Proposal 6 that an arithmetic error in calculating the shrinkage factor in the butterfat yield had been made by USDA. Therefore, the brief advocated that the butterfat yield factor in the butterfat price formula be increased to 1.211. The brief also discussed the butterfat recovery percentage in the protein price formula and supported increasing the butterfat retention factor in cheese manufacturing but did not specify a factor. The brief explained that currently the formula assumes that 90 percent of the butterfat in the cheese vat ends up in the finished product. The brief emphasized the importance of recognizing that the butterfat retention is based on butterfat going into the vat, not butterfat coming from the farm. The brief asserted that a 90 percent recovery rate of butterfat

going into the cheese vat is equivalent to 89.4 percent of the butterfat coming from farms going into the finished product after accounting for farm-to-plant shrinkage. The brief detailed that cheese manufacturers that testified achieving a fat recovery percentage of 90.25 percent on the basis of farm tests actually experienced a butterfat recovery of 90.9 percent of fat that entered the cheese vat. The brief concluded that this evidence, combined with additional testimony regarding available technology, makes higher butterfat recovery possible and should be reflected in the protein price formula.

The Dairylea, et al., brief opposed the elimination of the farm-to-plant shrinkage factor as advanced in Proposal 7. The brief asserted that while some production areas are dominated by large farms, a large portion of the country is dominated by small farms where farm-to-plant shrinkage is prevalent. However, the brief noted that farm-to-plant shrinkage is reflected in the product-price formulas because yield data provided by manufacturers are commonly based on farm weights and tests.

The post-hearing brief submitted on behalf of O–AT–KA stated the hearing record does not justify adoption of Proposals 6, 7 and 8, and that the proposed changes to yield factors would increase its raw milk costs and inhibit its ability to provide balancing services to the market. O–AT–KA was of the opinion that Proposal 6 should only be adopted if USDA simultaneously amends the product-price formulas to account for in-plant losses and off-grade products that are sold at a discount.

3. Value of Butterfat in Whey

A witness appearing on behalf of IDFA testified in support of Proposal 9 seeking to adjust the protein price formula to reflect the lower value and volume of butterfat recoverable from whey cream and was of the opinion that it was superior to Proposal 10. The witness asserted that the current Class III price formula values the butterfat not captured in the cheese at the Grade AA butter price even though it is sold as whey butter which has a lower value in the marketplace. In its brief, IDFA supported the testimony of the Leprino witness regarding saleable volume and the value whey cream in the marketplace. The brief also highlighted testimony that some processors do not return whey cream back into its cheese vats. The brief concluded that the butterfat adjustment contained in the protein price formula should be reduced by $0.016 to account for the lower value and saleable volume of whey cream.

The witness appearing on behalf of Agri-Mark supported adoption of adjusting the Class III protein price component to account for the lower value of whey butter (Proposal 10). The witness estimated that 0.42 pounds of whey butter is made from a hundredweight of milk and is sold at a price below the Grade AA butter price. According to the witness, Agri-Mark sells its whey butter for $0.074 per pound less than its Grade AA butter. The witness was unaware of any public data or published reports on market prices for whey butter and was of the opinion that there were very few manufacturers making whey butter in the United States.

The post-hearing brief filed on behalf of Agri-Mark, et al., contended that the product price formulas should recognize the lower value and saleable volume of whey cream and urged the adoption of Proposal 9. The brief summarized record evidence regarding plant whey cream prices and volumes and insisted that lower whey cream values are a market reality that should be reflected in the product-price formulas.

A witness appearing on behalf of Leprino testified in support of Proposal 9. The Leprino witness reviewed the derivation of the current cheese yield per pound of fat in the Class III product-price formula using a Van Slyke formula with an assumed butterfat recovery rate of 90 percent and a moisture content of 38 percent. The witness asserted that the Class III formula implies that 0.035 pounds of butterfat per cwt of milk is recoverable as whey cream but is valued in the Class III pricing formula as if it was used to produce 0.042 pounds of Grade AA butter. However, the witness asserted that all whey cream is used to produce Grade B butter which has a lower value than Grade AA butter. Based on testimony from Agri-Mark, LOL and NDA, the witness estimated that under the Class III price formula, cheese manufacturers in the Northeast and Pacific Northwest are being charged 12.5 and 20.4 cents, respectively, per pound of butterfat in the whey cream more than what these products can be sold for in the marketplace. The witness was unaware of any publicly available data on national whey cream production volumes and prices. The witness conceded that Leprino does not make cheddar cheese and uses all its whey cream in its cheesemaking.

The Leprino witness testified that the Class III formula also overestimates the volume of butterfat recoverable as whey cream. With an assumed 90 percent butterfat recovery rate, the witness said that the formulas infer the remaining 10 percent of butterfat is captured as whey cream. However, the witness explained that only 7.8 percent of the butterfat is actually recoverable because some butterfat is incorporated into dry whey or with the skim portion of the salt whey that must be disposed.

The Leprino witness testified that Proposal 9 would amend the Class III formula to better account for overvaluing the theoretical volumes and market values of whey cream. The witness explained that the butterfat credit in the protein portion of the Class III formula should be increased from 90 to 92.20 percent to acknowledge and correct for the 7.8 percent of butterfat that is recoverable as whey cream. In addition, the witness maintained that the butterfat portion of the Class III formula should be reduced by $0.016 to account for the lower price manufacturers receive for Grade B butter. The witness estimated that these changes would have lowered the Class III price by $0.169 per cwt over the last five years. The witness revealed that Leprino uses all of its whey cream in its cheese production and therefore is able to recoup the cheese value for all its milk components.

A post-hearing brief filed on behalf of Leprino stressed that the butterfat portion of the Class III formula should actually be reduced by $0.021 because hearing testimony from other witnesses revealed that 2007 whey prices in the Pacific Northwest were significantly lower than those in 2005 and 2006. The brief highlighted testimony that the 2005–2006 Pacific Northwest average whey cream sale price was 94.4 percent of the average Grade AA butter price while the 2005–2007 average whey price fell to 89.4 percent of the Grade AA butter price.

A witness appearing on behalf of Kraft supported adoption of Proposal 9. The witness indicated that on average, Kraft receives $0.10 per pound less for whey butter than for Grade AA butter.

A witness appearing on behalf of Saputo testified that the Class III pricing formula wrongly presumes that all cheese manufacturers have dry whey processing capabilities and can obtain a high value for dry whey in the marketplace. In reality, the witness said, manufacturers sell whey as whey protein concentrates, whey protein isolates or in liquid form that have widely disparate market values. According to the witness, assumptions regarding the production of dry whey may financially harm cheese manufacturers and could result in the accelerated consolidation in milk manufacturing. For these reasons, the witness supported the adoption of Proposal 9.

A witness appearing on behalf of Great Lakes Cheese (GLC) testified in support of adoption of Proposal 9. According to the witness, GLC is a cheese manufacturer whose plant in Adams, New York, processes 410 million pounds of milk annually into American style cheeses and by-products. The witness said that because milk components are lost in many stages of the cheesemaking process, the Federal order system should not have class prices that require manufacturers to pay for milk components that they are unable to use and sell. The witness illustrated by example the in-plant milk losses incurred from sanitizing equipment and removing sludge from the whey separator. In the example, the witness estimated that in 2006, GLC lost $23,770 worth of whey solids in the desludging process.

The GLC witness said that GLC's Adams facility produces one million pounds of whey cream annually which usually can be sold at the Grade AA butter market price. In 2006, the witness stated, GLC received $1.2425 per pound of whey cream fat and the average CME AA butter price was $1.2405. However, the witness explained, because the average Class III butterfat price was $1.3185 per pound (a $0.076 price difference), it had to pay a higher price for the butterfat in raw milk than it could recover in the market.

A witness appearing on behalf of NDA testified that Federal orders should establish fair minimum prices for producer milk while ensuring that the product-price formulas reflect the true value of dairy products in the market. The witness stated that NDA receives significantly less for its whey cream sales than it does for sweet cream sales and that Proposal 9 or Proposal 10 should be adopted to reflect this reality in the product-price formulas. The witness estimated that on average from 2005 through 2007, on a butterfat basis, NDA sold its whey cream for 36 percent less than it sold its sweet cream and $0.0244 per pound less than the Class III butterfat price. Therefore, the witness said, NDA supports IDFA's proposal to adjust the protein price to reflect the lower value of whey cream.

The NDA witness also explained that its average selling price for manufactured products is less than its reported prices to NASS because some of its production does not meet NASS specifications. The witness testified that products not meeting NASS specifications are either products made to meet specific customer orders or off-grade production such as cheese fines. The witness said that in fiscal year 2007, 3.98 percent of NDA's cheese production did not meet NASS specifications either by design or error. The volume was sold for a weighted average price of $0.0218 per pound less than its NASS reported cheddar—lowering NDA's total average cheese price for the year by $0.009 per pound, the witness said. The witness described similar scenarios for NDA's whey, NFDM and buttermilk production.

The NDA witness revealed that in fiscal year 2007, NDA's Sunnyside, Washington, plant, which uses modern horizontal cheese vats, experienced a cheese yield of 10.22 pounds of cheese per cwt of milk with an average moisture content of 38 percent and a butterfat recovery rate of 92 percent. The witness noted that NDA's yield reflects the use of whey cream added to the cheese vats.

A witness for Twin County testified in support of adopting Proposal 9. The witness asserted that the Class III price formula and current make allowances for cheese and dry whey overvalues milk components, particularly other solids, leading to reduced plant profitability. As a result, explained the witness, manufacturers are required to account to the marketwide pool for some components at the Class III price of milk even though they receive less than the Class III price for them in the marketplace.

The witness explained that Twin County produces cheddar cheese that meets particular customer specifications which do not allow for returning whey cream into its cheese-making process. Consequently, the witness said that Twin County invested in a whey processing facility to process its skim whey into whey protein concentrates (WPC), ultra filtered milk and permeate. According to the witness, Twin County sells all of its whey cream in the marketplace for approximately the Grade AA butter prices times a multiplier of 1.12. The witness said that Twin County does fortify its cheese vats with additional milk solids when it is economically feasible and its average cheese yield (including fortification) is seasonal and ranges from nine to ten pounds of cheese per cwt. The witness said that while Twin County is required to account to the marketwide pool for all milk components at the Class III price, it sells the whey produced at a reduced price in the market resulting in a net loss to the company for those components. Additionally, while the current make allowances effective March 2007 did improve the profitability of Twin County, the witness insisted that the whey make allowance is still inadequate to cover the whey manufacturing costs of the plant.

The Twin County witness conceded that the premiums it pays for milk could be adjusted downward to offset revenue losses. However, the witness indicated, renegotiating premiums with suppliers may have the unintended consequence of impeding or damaging long-standing relationships with suppliers and disrupt the ability to procure milk as needed.

The witness appearing on behalf of HP Hood also supported adoption of Proposal 9 or 10.

The post-hearing brief submitted on behalf of Dairylea, et al., opposed the adoption of Proposals 9 or 10. The brief did not dispute that whey cream has a lower value in the marketplace, but noted that there are also higher valued uses for butterfat that are not recognized in the butterfat price. The brief concluded that it would be inappropriate to amend the butterfat value to recognize lower-valued whey cream without also recognizing higher-valued butterfat uses.

The post-hearing brief submitted on behalf of DPNM, et al., opposed adoption of Proposals 9 or 10. The brief stressed that there is no publicly announced information regarding prices and volumes for whey cream or whey butter. The brief argued that record evidence demonstrates that a significant portion of whey cream is returned to the cheese vat and not sold as whey cream in the market.

The post-hearing brief submitted on behalf of NAJ also expressed opposition to the adoption of Proposals 9 or 10. The brief said that if value of whey butter is as low as the proponents claim, then a separate whey butterfat price should be established instead of lowering the protein price.

4. Barrel-Block Cheese Price

The witness appearing on behalf of IDFA testified in support of eliminating the current 3-cent barrel-block price adjustment (Proposal 12). The witness maintained that there is no cost difference between block and barrel production and therefore the 3-cent adjustment should be eliminated. Furthermore, the witness said, the CPDMP data used to determine the current make allowances takes into account the manufacturing cost difference between barrels and blocks. Maintaining the 3-cent adjustment would, the witness said, result in double counting of any purported cost difference. In its post-hearing brief, IDFA reiterated the need to eliminate the 3-cent barrel-block price adjustment.

A witness appearing on behalf of Davisco testified in support of Proposal

12. The witness offered evidence on Davisco's manufacturing costs for 40-pound block and 500-pound barrel cheese production at its LeSueur, Minnesota, plant. The witness explained that the LeSueur plant has separate block and barrel production lines that enable Davisco to easily isolate and compare packaging and capital costs. After discussing the differences in packaging and equipment needed to produce block cheese and barrel cheese, the witness testified that Davisco spends $0.0012 per pound more to produce block cheese. According to the witness, its de minimis cost differences in producing block and barrel cheese warrant eliminating the 3-cent adjustment.

The witnesses appearing on behalf of Kraft, NDA and Saputo expressed support for adoption of Proposal 12. The Kraft witness testified that the 3-cent adjustment historically represented the additional cost of producing blocks instead of barrels. However, the Kraft witness asserted, the gross return between blocks and barrels (adjusted to 38 percent moisture) is approximately $0.0075 per pound. Therefore, concluded the Kraft witness, it is no longer necessary to add 3-cents to the barrel cheese price because that cost difference is being recouped in the marketplace.

No proponent testimony was received regarding Proposal 13.

The Kraft witness opposed eliminating the barrel cheese price from the Class III price formula (Proposal 13). The witness asserted that since 2000, the NASS cheese price survey represented approximately 57 percent barrels and 43 percent blocks. Therefore, the witness insisted that it would be inappropriate to eliminate the barrel price from the Class III price formula because it would not reflect the actual prices of such a large part of the national cheese market.

The witness appearing on behalf of Leprino supported eliminating the 3-cent block-barrel adjustment. The witness asserted that the adjustment was originally added to the barrel cheese price because it was considered the standard cost difference between producing block and barrel cheese. The witness testified that the 3-cent adjustment was no longer necessary because the CPDMP cheese manufacturing cost survey used to derive the current make allowances already accounts for the cost difference. The witness explained that keeping the 3-cent adjustment would be double counting cost differences that may exist. According to the witness, the 3-cent adjustment was never based on actual cost data; rather it was a generally accepted valuation of the average production cost difference between producing 40 pound blocks and 500 pound barrel cheese at 39 percent moisture standard. However, the witness noted that after January 2001 the barrel cheese price was adjusted to 38 percent moisture standard. The witness asserted that this moisture standard change on average increased the barrel cheese price 2.2 cents per pound during the last five years. The witness estimated that eliminating the 3-cent barrel-block adjustment would reduce the Class III price by $0.1624 per cwt.

The Leprino witness also opposed adoption of Proposal 13 because it would reduce the amount of data used to compute the classified milk prices. The witness said that the barrel cheese price should continue as a factor in computing the Class III price because of the additional cheese volume for which it accounts.

The post-hearing brief submitted on behalf of Agri-Mark, et al., maintained that the 3-cent barrel adjustment should be eliminated and supported the views of the IDFA witness and its post-hearing brief urging the adoption of Proposal 12.

The post-hearing brief submitted on behalf of Dairylea, et al., opposed eliminating the 3-cent per pound barrel-block cheese adjustment as advanced in Proposal 12. The brief expressed the opinion that cost data from one cheese plant offered by Davisco Foods is not adequate to support adopting the proposed change. According to the brief, cost data presented by Davisco Foods only compared packaging and capital costs for producing barrel and block cheese. The brief argued that despite Davisco's belief that total manufacturing costs before packaging were the same, there may be differences in other processing costs because block and barrels are produced at different moisture contents. The brief asserted that if Davisco Foods cost data is adjusted to reflect average moisture content for blocks (37.75 percent) and barrels (34 percent), the cost of capital and packaging for blocks would be 10 percent higher than for barrels.

The Dairylea, et al., brief also addressed the proponents' assertion that incorporating CPDMP data into determining new make allowances provides the necessary recognition of the cost difference between block and barrel production. The brief argued that CDFA data in fact only includes cost data from block production and its continued use would mean that new make allowances would be too heavily weighted towards block production. The brief also asserted that evidence showing the market price relationship between blocks and barrels does not provide a basis to conclude that similar cost changes have occurred in the manufacturing costs of block and barrel cheese.

In its brief, DPNM, et al., opposed the reduction or elimination of the 3-cent barrel price adjustment (Proposal 12) unless Proposal 15 was adopted. The brief explained that Proposal 15 (using the CME to determine product prices) is intended to use only the CME block cheese price, not an average of the 500-pound barrel and 40-pound block prices. If Proposal 15 is adopted as intended, DPNM, et al. wrote, the 3-cent barrel adjustment would no longer be necessary.

5. Product Price Series

The witness appearing on behalf of Agri-Mark testified in support of Proposal 14. The witness said that the proposed price series would use a combination of the NASS and CME cheese prices in the Class III product-price formula. The witness said that Proposal 14 seeks to incorporate current CME data to reduce the monthly differences between prices that most manufacturers sell their cheese and the cheese price from which the manufacturers' cost of raw milk is determined. The witness said that cheese manufacturers use the CME cheese price to set their base cheese price which becomes reflected in the NASS cheese price announced two weeks later. The witness explained by example that the two week lag between CME and NASS price releases was a problem in 2004 when cheese prices were rapidly changing from week-to-week causing the two price series to vary by more than 10 cents per pound in seven months of the year. According to analysis conducted by the witness from January 2000 until February 2007, 98 percent of the variation in the NASS block cheese price and 87 percent of the variation of the NASS barrel cheese price could be explained by the CME price.

The Agri-Mark witness hypothesized by example how Proposal 14 could be administered. The witness explained that the cheese price in the Class III formula for April 2007 would be calculated as follows: (1) Compute the average CME cheese price for the four weeks in April; (2) add the average NASS cheese price for the last two weeks of March and the first two weeks of April; and (3) subtract the average CME cheese price for the four weeks of March. The Agri-Mark witness explained that the cheese price used to

determine the advanced Class I price should be as follows: (1) Compute the average CME cheese price for the second and third weeks of March; (2) add the average NASS cheese price for the first and second weeks of March; and (3) subtract the average CME cheese price for the last two weeks of February. The witness was of the opinion that these new formulas would enable USDA to use current CME prices while in the long-run the NASS price series would continue as the primary determinant of cheese prices. The witness was of the opinion that the resulting ''hybrid price'' would reduce large monthly price variations like those experienced in 2004. The witness said that Agri-Mark does not support the sole use of CME prices in the price formulas because of the low volume of trades and the possibility of price manipulation.

The Agri-Mark witness indicated that adopting this hybrid price would not significantly change the average USDA cheese prices or FMMO producer blend prices. The witness estimated that the average Class III prices would have been approximately $0.005 per pound less and the Northeast order producer blend prices would have averaged $0.003 per cwt less using this hybrid price during 2003–2006. The witness did not see a need to compute a hybrid price for butter because the lag between the CME and NASS price reporting is not a problem.

In their post-hearing brief, Agri-Mark, et al., reiterated their support for adoption of Proposal 14 and opposition to adopting Proposals 15 and 18, both of which are discussed subsequently.

A witness appearing on behalf of DPNM, et al., testified in support of using CME product prices in the FMMO price formulas as advanced in Proposal 15. The witness was of the opinion that the CME is a superior price discovery mechanism. The witness asserted that the time lag associated with the NASS price survey has, at times, created huge differences between the advanced Class I and Class II prices and the monthly prices that are incorporated into the Class III and Class IV formulas. The witness opined that the time lag associated with using the NASS price survey sends incorrect price signals to producers and that it creates a disincentive for manufacturers to seek higher product prices in the market because it will result in increased raw milk costs.

The DPNM, et al., witness testified that NASS product prices track closely with CME prices for cheese and butter. However, the witness said, the NASS NFDM price does not reflect the current cash market. The witness stated that the NFDM market is unique because there are only a few sellers and asserted that sellers tend to use the previous week's NASS NFDM price to sell their products. The witness stated that there has been a growing price disparity between the NASS NFDM price and the NFDM price reported by Dairy Market News. According to the witness, during the first quarter of 2007, the monthly NASS NFDM prices averaged $0.12 per pound less than what was reported as the average Western Mostly NFDM price by Dairy Market News. The witness calculated that this resulted in Class II and Class IV prices being $1.03 per cwt lower. The witness asserted that the price discrepancy could be a reporting error, noting that NASS does not have the authority to audit its surveyed price data.

The DPNM, et al., witness testified that CME product prices could become the preferred price discovery mechanism because it is a public market and since 1997 has expanded trading times and the number of traded dairy products. The witness stressed that CME product prices are more reflective of the current market for cheese, butter and dry whey because many manufacturers refer to the current CME product price when making their sales. The witness added that oversight by the Commodity Futures Trading Commission (CFTC) provides for regulatory oversight. However, the witness testified that NFDM is not actively traded on the CME because packaging specifications require that NFDM traded on the CME be in government-specified bags. The witness was of the opinion that if such packaging requirement was changed, the CME would become a viable market for NFDM.

DPNM, et al.'s, brief expressed support for adoption of Proposal 15 and reiterated the position that NASS product price surveys should be replaced by CME product prices in each of the price formulas except for the other solids formula. According to the brief, since the other solids formula uses the NASS dry whey price and the CME does not have a cash traded dry whey price, continued use of the NASS dry whey price is appropriate. The brief indicated that the use of CME prices would alleviate timing and circularity issues associated with relying on NASS survey prices. The brief concluded this position is supported in a General Accountability Office (GAO) study of June 2007.

The DPNM, et al., brief expressed support for using competitive pay price series to establish classified Federal order milk prices. However, the brief expressed the opinion that Proposal 18 needs to be more fully developed and requested that USDA further investigate the use of a competitive pay price and convene a hearing to consider this alternative.

A witness appearing on behalf of the Maine Dairy Industry Association (MDIA) testified in support of Proposal 18. According to the witness, MDIA is an association that represents all of Maine's 350 dairy farmers. The witness said that Proposal 18 seeks to establish an average competitive pay price for milk by incorporating a factor into the other solids portion of the Class III price formula to account for any monthly spread between the component prices for milk and a competitive pay price for equivalent Grade A milk. The witness was of the opinion that a competitive pay price is a superior method for determining the value of milk and setting regulated minimum prices than are product-price formulas. The witness contended that butter, NFDM, cheese and whey each have a separate market that responds to separate and unique supply and demand factors. The witness explained that in a competitive pay price system buyers pay for raw milk based on supply and demand conditions of the particular market in which they operate.

The MDIA witness stated that USDA has previously considered competitive pay price mechanisms for pricing Class III milk. The witness explained that a 1994–1996 simulated analysis conducted by USDA revealed several difficulties with competitive pay prices, such as: (1) The influence of regulated minimum prices could not be eliminated; (2) inadequate vigorous competition among buyers of milk; and (3) competitive pricing was based on the competitive situation for milk in Minnesota and Wisconsin. The witness explained that these limitations formed the analysis basis for Proposal 18.

The MDIA witness explained how Proposal 18's competitive pay price would be administered. The witness said that geographic areas where an adequate level of competition for milk exists should be determined by computing a Herfindahl index for each county. The witness said this index is a measurement of market competitiveness where a low Herfindahl index indicates more competition for milk. For example, competition for milk in a county with an index of 0.3450 is greater than in a county with an index of 0.3500. The witness proposed that competitive price zones be determined by aggregating clusters of 10 contiguous counties or more with indexes less than 0.33. The witness said that an ideal situation would be if at least a third of

the manufacturing milk in Federal order marketing areas were competitive price zones. The witness explained that handlers purchasing milk within these zones would be exempt from paying minimum classified prices, but would still be required to pay current differentials for Class I and Class II milk. According to the witness, these differentials would be pooled and producers within the competitive price zones would receive a 12-month rolling average producer price differential (PPD). Handlers would still pay regulated classified prices for milk produced outside of these zones, the witness said.

According to the MDIA witness, market administrators would collect actual payment data from handlers for milk purchased within the competitive price zones for the preceding month and estimated payments for the current month. The market administrators would compute a weighted average price and deduct from that price the 12-month rolling average PPD for the month. This residual would be the value of manufacturing milk in the competitive price zone. A national average competitive manufacturing milk price would then be computed by aggregating the average price and volume data from all reporting competitive price zones. This result would become the new minimum Class III price for milk purchases outside of the competitive price zones.

The MDIA witness said that the computation of protein and fat prices would be unchanged under its competitive price proposal. However, the other solids price would be the residual value of the Class III price once the values of butterfat and protein were deducted, the witness explained. The witness said indirect compensation to farmers, such as hauling charges, would not be included in the computation of a weighted average price but could be a ''loophole'' used by manufacturers to lower the Class III milk price by shifting more monies into hauling subsidies.

The MDIA witness asserted that over the long run, producers located inside competitive price zones would receive the same revenue for their milk as producers located outside of competitive price zones. The witness did not know if Proposal 18's pricing method would generate higher or lower prices to all producers than the current end product pricing system.

The MDIA witness was of the opinion that the largest group of counties in competitive price zones would be in the Upper Midwest (UMW) marketing area because of the large number of cheese plants competing for a milk supply. This would most likely lead to a weighted average competitive pay price that is heavily influenced by prices paid by UMW plants that historically have been higher than Federal order minimum prices, predicted the witness. The witness conceded that a competitive pay price heavily weighted to conditions in the UMW would not reflect national supply and demand conditions.

A Maine dairy farmer appearing on behalf of the MDIA testified in support of Proposal 18. The witness testified that Maine is not an area regulated by the Federal milk order program, but producer prices are heavily influenced by those established under the Northeast order. The witness stated that Maine dairy farmers have turned to alternative sources of income such as state subsidies and increased equity financing to keep their farms operating because Federal minimum prices are too low and driven by unpredictable price swings for dairy products.

After adjusting USDA cost of production information for Vermont to account for lower labor and feed costs, the MDIA witness estimated the cost of production of a Maine dairy farmer to be $19 per cwt, $20 per cwt and $24 per cwt in 2004, 2005 and 2006, respectively. The witness compared this price to the Northeast Federal order mailbox price of $16.29 per cwt, $15.39 per cwt and $13.22 per cwt in 2004, 2005 and 2006, respectively. Using those data, the witness estimated that for a medium-sized Maine dairy farm with 150 cows, average net income fell by $70,000 in 2004, $140,000 in 2005 and $320,000 in 2006. The witness asserted that this increasing difference between revenue and costs illustrates why the Federal order pricing system needs to be amended to more fully reflect dairy farmer cost of production.

The MDIA witness also testified regarding two programs operated by the State of Maine. One program boosts revenue to Maine dairy farmers by distributing an over-order price payment determined by the Maine Milk Commission; and a second program that gives a subsidy payment from the State general fund. However, the witness said during recent months these payments have not been enough to make up for the difference between declining milk prices and increasing production costs. The witness was of the opinion that these State programs cannot be relied upon in the long-run to provide a stable marketplace for dairy farms.

A post-hearing brief filed on behalf of MDIA reiterated its position that end product pricing does not result in high enough prices for the dairy farmers of the northeastern region of the United States. MDIA stated that Proposal 18 is ''a good starting point'' from which to develop a competitive price scheme that would replace pricing derived from the values of manufactured dairy products. The brief acknowledged that MDIA's proposal is complex and lacks much of the detail needed for its adoption. However, MDIA reiterated its position that the adoption of a competitive pay price system would improve how producer milk is valued and through which minimum classified prices would be determined.

The MDIA brief argued that price discovery based on competitive conditions for milk is superior to milk prices derived from the market prices of manufactured dairy products. The brief insisted that prices derived using sound economic principles and accurate market data are crucial to accurate price determination. The brief stressed that ending a competitive pay price series for milk has harmed dairy farmers, especially in the northeastern, mid-western and southeastern regions of the country. The brief attributed observed price volatility in milk prices to the use of end product price formulas. In this regard, the brief asserted that the product-pricing formulas and the logic underlying component pricing do not meet the articulated policy of the AMAA. The brief argued that the AMAA's paramount objectives are stabilization and enhancement of producer income.

The witness appearing on behalf of Dairylea supported using the CME cheese and butter prices as substitutes for the NASS surveyed prices as advanced in Proposal 15. The witness said that the industry already uses the CME to set their base selling prices. The witness asserted that using NASS surveys to set minimum prices has resulted in disorderly market conditions because of the time lag of NASS product price reporting results in short-term manufacturing losses. According to the witness, using the CME prices for butter and cheese to set minimum classified milk prices would eliminate the time lag issue and price circularity issues.

A post hearing brief submitted on behalf of Dairylea, et al., opposed adoption of Proposal 18 by concluding that record evidence is insufficient to support its adoption. Their post-hearing brief specifically expressed support for the portion of Proposal 15 for using CME prices for cheese and butter in the product price formulas. This was not supported by DFA. While Dairylea's brief expressed the opinion that using CME prices would address the issue of price circularity inherent in the NASS

price survey, they did not support the use of CME prices for dry whey and NFDM.

In a separate post-hearing brief, DFA specifically expressed support for adoption of a hybrid price series advanced in Proposal 14. DFA emphasized that the hybrid price series would transmit more timely market signals to processors and producers by aligning the purchase price of milk with the market prices of milk products.

The witness appearing on behalf of IDFA testified in opposition to adoption of Proposal 14. The witness was of the opinion that using the proposed hybrid price would result in unnecessarily complex price formulas that would provide no tangible benefit to the industry. The witness acknowledged the problems associated with the time-lag of the NASS price series, but stated that there are alternative ways to address the lag other than adding complexity to the price formulas. Similar arguments were offered in IDFA's post-hearing brief.

The IDFA witness also testified in opposition to adoption of Proposal 15. The witness stated that the NASS product price survey provides the largest possible sample of wholesale prices and should continue to be relied upon in the product price formulas. The witness said that USDA's reasoning for relying on the NASS price survey in the Federal order reform decision is still relevant. The witness was of the opinion that many of the complaints associated with the NASS price series could be remedied if the price reporting to NASS became electronic, mandatory and audited. IDFA insisted in its post-hearing brief that using the CME to determine product prices could result in product prices that are not representative of actual market sale prices and could encourage product trading on the CME solely to manipulate the minimum classified milk prices established under Federal orders.

The IDFA witness also testified in opposition to adopting a competitive pay price series as advanced in Proposal 18. The witness indicated that currently no reliable unregulated milk supply of adequate size exists to become the basis for a competitive pay price series.

The witness appearing on behalf of Kraft opposed adoption of Proposal 15 and supported the continued use of the NASS price survey to determine classified prices. The witness explained that the NASS price survey is national in scope and represents a significantly larger proportion of national cheese production than does the CME. The witness was of the opinion that if CME prices are used to determine classified prices, the growing volume of cheese production and sales in the western states would not be adequately represented. Therefore, the witness concluded, NASS survey prices best reflect the settled sales price at the plant. The witness acknowledged the time lag between CME prices and the NASS price survey and insisted that a better solution to the time lag problem would be to require timelier reporting of prices to NASS rather than abandon the NASS price survey.

The witness appearing on behalf of Saputo opposed the adoption of Proposals 14 or 15 and indicated support for the continued use of the NASS price survey. The witness was of the opinion that timelier price reporting to NASS would counter asserted problems associated with the lag between the CME and NASS survey prices. The Saputo witness opposed using the CME to set minimum prices because, in the witness' opinion, the CME is too thin a market to provide accurate market signals.

The witness appearing on behalf of Leprino testified in opposition to Proposal 15 because of the low volume of cheese that is traded on the CME as compared to the volume of cheese production that is represented in the NASS survey. The witness also testified that Leprino was not concerned with the time lag between the CME prices and the NASS price survey. The witness was of the opinion that the time lag is predictable and manageable for manufacturers.

The witness appearing on behalf of LOL testified in opposition to Proposal 15. The witness was of the opinion that the more appropriate solution to the problem of increased manufacturing costs is the timelier updating of make allowances and not the use of the CME to derive classified prices. The witness argued that the NASS price survey is more representative of the national cheese market while the CME continues to remain a thinly traded market.

The witness appearing on behalf of HP Hood opposed adoption of Proposal 18 because of the lack of analysis available to determine its utility.

A post-hearing brief filed on behalf of O–AT–KA stated that Proposal 18 may warrant further consideration but it should not be adopted in this proceeding.

6. Other Solids Price

A witness appearing on behalf of NAJ testified in support of adopting Proposal 16. The witness was of the opinion that the value of dry whey should primarily be derived from its protein content, rather than its other solids content as currently computed. The witness acknowledged that from August 2006 to February 2007 the NASS dry whey price more than doubled from 29.65 cents per pound to 60.05 cents per pound and the lactose price reported by Dairy Market News increased from 33.89 cents per pound to 59.34 cents per pound. The witness was of the opinion that the recent increase in lactose prices reflects a shortage in lactose processing capacity and not a lack of available lactose. The witness believed that the high dry whey and lactose prices prior to the fall of 2006 justify valuing dry whey on a protein rather than other solids basis. According to the NAJ witness, if Proposal 16 had been in place from April 2003 to September 2006, the Class III price would have been one-cent per cwt higher and only marginally higher since September 2006.

The NAJ witness testified that from 2003 to 2006 dry whey production only increased 1.5 percent, while the increased production of whey protein concentrates (WPCs) ranged from 6.6 percent to 45.5 percent depending on the percent protein in the WPC. The witness concluded that purchasers of whey solids prefer WPC products that are high in protein and therefore dry whey should be priced on a protein basis.

Using Dairy Market News' monthly prices since January 2000, the witness discussed the costs of buying a pound of protein (protein parity) and a pound of lactose (lactose parity) in dry whey or WPC–34 (34 percent protein). The witness concluded that in all months, the average price per pound of protein in dry whey or WPC–34 exceeded the average price per pound of lactose. The witness also asserted that the cost per pound of lactose in WPC–34 is higher than if lactose were purchased separately. According to the witness, this price relationship reveals that buyers of dry whey and WPCs are purchasing these products for their protein content rather than for their lactose content. The witness also emphasized that the value of protein in dry whey and WPC–34 more closely reflect each use than does lactose value contained in the two products.

The NAJ witness also offered a modification to Proposal 16 in that NASS price surveys be expanded to collect and report market prices of various WPC's and lactose. The witness said this would build a dataset for use in future rulemakings to consider the appropriate valuation of whey solids.

A post-hearing brief filed on behalf of NAJ reiterated positions given in testimony. According to the brief, the current other solids price formula does not reasonably connect the market value

of whey solids, which NAJ maintains is based on its protein content, and how producers are paid for whey.

The witness appearing on behalf of IDFA opposed adoption of Proposal 16 because it was too complex and would inappropriately value whey based on its protein content when it is comprised mainly of other solids. The witness said that USDA's preliminary economic analysis demonstrates that adoption of Proposal 16 could increase the cost of high protein milk while lowering the cost of low protein milk. However, milk's other solids content (primarily whey) does not change in relationship to the protein content, the witness said. The witness also stated it would be inappropriate to price dry whey on its protein content since protein does not affect whey yields.

The witness appearing on behalf of Leprino testified in opposition to Proposal 16 because its adoption would result in distorted milk component values. The witness insisted that since dry whey yields are primarily driven by the lactose content of milk and the other solids composition, it would be inappropriate to price whey on its protein content.

The post-hearing brief filed on behalf of Agri-Mark, et al., opposed adoption of Proposal 16 arguing that the price of other solids would then be determined on its protein component which has no impact on yield. The brief claimed that since there in no standardized protein content for whey, adoption of Proposal 16 could result in significant over-valuing of the protein in whey. However, the brief supported NAJ's call for USDA to collect manufacturing cost and price data for WPCs and lactose because doing so would provide data on how to appropriately value whey solids for use in future proceedings.

The post-hearing brief filed on behalf of Dairylea, et al., opposed adoption of Proposal 16 because it would not add value or efficiency to the product price formulas.

The post-hearing brief filed on behalf of DPNM, et al., opposed the adoption of Proposal 16. However, the brief did express support for NAJ calling for USDA to collect prices, manufacturing costs, and volumes for whey protein concentrates and whey protein isolates.

A witness from Pennsylvania State University offered testimony on the use of an econometric model framework to analyze changes to the Federal milk marketing orders from all the proposals under consideration and provided the results at the hearing. The testimony was not given on behalf of the Pennsylvania State University. The witness testified neither in support of or in opposition to any proposals. The witness explained that the model is a short-run supply-side model that does not take into account changes in milk demand. The witness said that the model analyzed scenarios as outlined in the USDA preliminary economic analysis based on the USDA Baseline Projections to 2015. The witness concluded that the USDA preliminary economic analysis did not accurately reflect changes in the milk supply because it did not adequately account for the increase in feed prices and the resulting effect on producer decisions.

A witness testifying on behalf of the Ohio Farmers Union (OFU), National Farmers Union (NFU) and the National Family Farm Coalition (NFFC) called for the hearing to be terminated because dairy farmers continuously face low milk prices and high input costs, and that these concerns were not being addressed in this proceeding. The witness was of the opinion that the FMMO system was no longer accomplishing its mission of returning market power to dairy farmers.

*Discussion and Findings*

This proceeding offered a wide array of proposals aimed at changing FMMO end-product pricing formulas used to establish classified prices in all orders. The original 19 proposals noticed range from abandonment of the current product-price formulas used to compute minimum Class III and Class IV prices to proposals that seek a variety of changes to the product-pricing formulas including manufacturing cost factors (make allowances), yield factors, technical factors, and authority to separate a portion of manufactured product sales prices from what otherwise is used to establish subsequent raw milk prices. The record of this proceeding encompassed a total of 12 hearing days over a 6-month period from February through July, 2007 and consists of more than 3000 pages of testimony, plus 78 exhibits and 10 post hearing briefs. The diversity of proposals considered indicates a lack of consensus within the dairy industry concerning how the Federal order program should set minimum milk prices in general and specifically how the many features of the product-price formulas should be altered.

Proponents for increasing make allowances have requested that regardless of the method adopted, USDA should omit a recommended decision and immediately adopt higher make allowances for butter, NFDM, cheese and dry whey because manufacturing costs have increased since the implementation of the current make allowances. The proponent from Agri-Mark for example, provided direct testimony that electricity and other fuel costs in cheese making had increased for plants operated by the cooperative. NMPF's proposed use of BLS energy cost data for an energy cost adjustor for make allowances as sought by Proposal 17 (addressed in a separate decision) provided reinforcement of the continued and rapid increases in those energy costs. Proposal 2, advanced by Agri-Mark, seeking to formally regularize the methodology for updating manufacturing cost data, and Proposal 20, advanced by Dairylea, to establish a cost add-on also are addressed in a separate decision.

Proponent witnesses representing Leprino, Twin County, and IDFA provided specific and general information that also support concluding that energy, transportation, labor and packaging costs for manufacturing processors have increased since the current make allowances became effective in March 2007. As pointed out by IDFA, because make allowances account for manufacturing costs in the Class III and Class IV price formulas but do not change as those costs change, increasing make allowances is the only reasonable way by which those increased costs can be recovered.

The ability of a manufacturer to offset cost increases are limited by the level of make allowances in the Class III and Class IV price formulas. Manufacturing processors are charged the FMMO minimum price for producer milk used to produce Class III and Class IV products. However, plant manufacturing cost increases may not be recovered because Class III and Class IV product-price formulas use make allowances that are fixed regardless of market conditions and change only by regulatory action. Simply put, when manufacturing cost increases result in costs higher than those provided by the formula make allowance factors, the value of milk used to make those products may be over-valued.

Product-price formulas are relied upon to establish the minimum class prices of raw producer milk used to make Class III and Class IV products, which in turn establish Class I and Class II prices. The product-pricing formulas use market prices collected by NASS for cheddar cheese, Grade AA butter, and dry whey to set a minimum price for Class III milk and NFDM and Grade AA butter to set a minimum price for Class IV milk. No competitive pay price series currently exists that can be relied upon to establish a price for raw milk nationally. While some proponents look

to the CME, the futures prices of the CME use the FMMO minimum class prices as the starting points for Class III and Class IV milk futures contracts.

In the absence of competitive pay price series, product-price formulas for cheese, dry whey, NFDM and butter serve as the only practical basis from which the value of raw producer milk used in their production can be derived. A raw milk value is, in part, derived from NASS collecting and aggregating weekly reported sales price data from manufacturers who produce and market these commodity products and are presented in the NASS Dairy Product Price Survey.

The Class III and Class IV product-price formulas, among other factors, use the market prices of the manufactured products from which make allowance factors are subtracted. The remaining value, when converted to a milk equivalent basis, is the value of raw milk. Accordingly, the accuracy of deriving the minimum value of raw milk is dependent on the accuracy of the commodity sale prices reported and in large part the accuracy of the manufacturing costs factors, or make allowance factors, that are used in the pricing formulas.

The Agri-Mark proposal, Proposal 1, seeks to change make allowances used in the Class III and Class IV product formulas by relying on manufacturing cost data contained in the record of this proceeding by combining such data for plants outside of California with the most current manufacturing cost data published by the CDFA.[1] The 2-sets of manufacturing costs for cheese, NFDM, dry whey, and butter would be combined on a weighted average basis in a manner consistent with the development of the current make allowances used in determining Class III and Class IV prices. Other proponents seek to use the most recently available publications of the CDFA.[2] This method was used in earlier rulemakings to develop make allowances used in the product-price formulas.[3] [4]

Opponents of increasing make allowances argue a number of points—that they are already set at too high a level, that dairy farmer production costs also have increased significantly due to higher energy and feed costs, that processors should look beyond asking dairy farmers to receive less for their milk by charging more for manufactured products, and that make allowance increases should be made only when all dairy farmer production costs are captured in their milk pay price. These are not valid arguments for opposing how make allowances should be determined or what levels make allowances need to be in the Class III and Class IV product-pricing formulas. The record demonstrates that current make allowance levels are not reflective of the costs manufacturers incur in processing raw milk into the finished products of cheese, butter, NFDM and dry whey.

Additionally, the Class III and Class IV product-price formulas establish derived classified prices for producer milk that are used nationally in all Federal milk orders. When dairy farmer production costs exceed the value for which products are sold in the marketplace, no source of revenue from the marketplace is available to cover those costs.

In the aggregate, the costs of producing milk are reflected in the supply and demand conditions for the dairy products. When the supply of milk is insufficient to meet the demand for Class III and Class IV products, the prices for these products increase as do regulated minimum milk prices paid to dairy farmers because the milk is more valuable and this greater milk value is captured in the pricing formulas. Dairy farmers face no regulatory minimums in their costs and face no regulated minimum payment obligation in the way that regulated handlers must pay dairy farmers for milk.

It is reasonable to conclude that the make allowances used in the Class III and Class IV product-price formulas should be updated to reflect changes in the costs manufacturers incur in producing cheese, butter, dry whey, and NFDM. It is necessary to reflect changes in manufacturing costs so that with the prevailing market prices for manufactured products, minimum Federal order classified prices can be set. In the record of this proceeding, evidence demonstrates that the manufacturing costs of producing cheese, dry whey, NFDM and butter have increased since the implementation of current make allowances on an interim basis and during the 6-month period when this proceeding occurred.[5]

The record reveals an absence of industry consensus concerning the method (how) make allowances should be changed that in turn determines the level of the make allowances used in the Class III and Class IV product-pricing formulas. The differing proposed make allowance levels offered over the course of the proceeding represent the changes in opinions concerning which manufacturing costs, which manufacturing cost survey(s) and other factors should be considered. For example, some proponents seeking higher make allowances argued that only CPDMP survey data and/or RBCS survey data volumes should be relied upon as these surveys are most reflective of costs by plants who pay Federal order prices. CDFA data represents a cost survey of only California processing plants. It is important to Federal order classified pricing that Class III and Class IV prices be derived, as much as possible, from national estimates of manufacturing cost information and because NASS survey prices include California. Accordingly, it is reasonable to conclude that appropriately combining this cost data with cost survey data of manufacturing plants not located in California will tend to produce a measure of national manufacturing costs. Doing so will tend to not bias manufacturing costs measurements that may otherwise result from the exclusive use of one set of cost survey data over another.

The proposal (Proposal 3) by DPNM is offered in opposition to increasing make allowances in the manner offered by Agri-Mark. DPNM argues that because the CPDMP 2006 survey represents manufacturing costs of plants not located in California, then that survey should be exclusively relied upon in determining new make allowances. This argument is rejected. Proponents of increasing make allowances have clearly demonstrated that costs of producing Class III and Class IV products have increased. Continuing with the method previously relied upon—relying on manufacturing cost data from CPDMP's

[1] Official Notices are taken of amendments to make allowances and all related documentation by the State of California in the Determinations, Findings, Conclusions and Order of the Secretary of Food and Agriculture, November 20, 2007, by the Office of the California Secretary of Agriculture. See *http://www.cdfa.ca.gov/dairy/dairy_hearings_matrix.html*, and *http://www.cdfa.a.gov/dairy_hearings.html*, and Summary of Weighted Average Manufacturing Costs, Butter, Nonfat Dry Milk, Cheddar Cheese, and Dry Whey Powder, Released September 18, 2007; See *http://www.cdfa.ca.gov/dairy/pdf/manufcostexhibit2006.pdf.*

[2] Ibid.

[3] Official notice is taken of 67 FR 67906 November 7, 2002, and 68 FR 7063, February 12, 2003, final decision and final rule respectively, and 66 FR 54064, 65 FR 76832.

[4] Official notice is taken of 71 FR 67467, November 22, 2006, 71 FR 78333, December 29, 2006, as well as hearing testimony, exhibits, and post hearing briefs for the hearing and hearing continuations originally noticed in 71 FR 545, January 5, 2006, and related materials concerning make allowances and dairy product manufacturing costs, and published for the convenience of the public on the USDA, AMS Dairy Programs Web site at *http://www.ams.usda.gov/dairy.*

[5] Ibid. Official notice is taken of 72 FR 36341, July 3, 2007.

cost survey and CDFA in combination—has provided effective and useable make allowances in the pricing formulas even though it is clear that the current levels of make allowances need to be updated.

At issue in this proceeding, in part, is whether make allowance levels should be increased and what method should be relied upon to determine those levels. On its face, the DPNM proposal to rely only on the CPDMP 2006 survey data in determining make allowances may seem reasonable as the survey excludes California plants. However, the argument does not consider other important factors that affect the marketing conditions for milk and dairy products represented by California's dairy sector and its impact on the supply and demand for milk and dairy products nationally. Cheese, butter and NFDM compete in a national marketplace and as such the prices established under the Class III and Class IV product-pricing formulas need to be reflective of marketing conditions that directly affect determining the minimum value of raw milk. Accordingly, Proposal 3 is not adopted.

While many hearing participants support the general method of determining make allowances adopted in this decision, the record nevertheless reveals a lack of industry consensus in determining specific factors to be used in the Class III and Class IV product-pricing formulas. This is illustrated by the information presented in Table 1 below. The seven sets of suggested make allowances represent proposals from 4 different groups at various points of this proceeding. The Agri-Mark, LOL, and DPNM proposals were advanced by producer groups with different milk marketing and processing interests. Regulated processors, including some producer groups who are also regulated in their capacity as processors, are represented in this regard by the proposals advanced by IDFA and Leprino.

TABLE 1

| Proponents | Make allowances | | | |
|---|---|---|---|---|
| | Cheese $/lb | Butter $/lb | NFDM $/lb | Dry whey $/lb |
| Agri-Mark et al. (Brief Pg 20–24) | 0.2154 | 0.1725 | 0.1782 | 0.2080 |
| IDFA (Brief pg 11) | 0.2154 | 0.1725 | 0.1782 | 0.2080 |
| IDFA (Brief pg 12) | 0.2198 | 0.1846 | 0.1662 | 0.1976 |
| Leprino (Brief pg 2) | 0.2154 | 0.1725 | 0.1782 | 0.2080 |
| DPNM Proposal | 0.1638 | 0.1108 | 0.1410 | 0.1500 |
| DPNM Brief (pg 1) | 0.1638 | 0.1150 | 0.1410 | 0.1590 |
| DPNM Brief (pg 20) | 0.1638 | 0.1108 | 0.1410 | 0.1498 |

The range of proposed make allowances presented in Table 1 varies more than 30 percent between the highest and lowest proposed make allowance levels for cheese and dry whey. Similarly, the range from highest to lowest proposed make allowance for butter remarkably varies by more than 60 percent and about 25 percent for NFDM.

It is appropriate to rely on the CPDMP 2006 survey of manufacturing costs in establishing the methodology of how make allowances should be determined. Its use is consistent with the methodology relied upon in determining the make allowances currently in the Class III and Class IV product-price formulas. The CPDMP 2006 survey results provide a new estimation of manufacturing costs for plants not located in California. The CPDMP 2006 survey results, when used in conjunction with the most current survey results from CDFA, improves estimation of manufacturing costs on a national basis and is consistent with the methodology relied upon in determining the make allowances currently in the Class III and Class IV product-pricing formulas.

The manufacturing cost data presented in the CPDMP 2006 survey is essentially a new cost survey. The data presented in the survey is similar to CPDMP's earlier cost survey in that both surveys rely on cost information provided from manufacturing plants not located in California. The surveys are similar in that they collect manufacturing cost data for cheese, butter, NFDM, and dry whey. However there are differences, the most important of which is using different samples of plants than those reported in the earlier CPDMP 2005 survey.

In the CPDMP 2005 survey, 16 cheese plants provided cost data that were incorporated to represent the weighted average costs to manufacture cheese. The 2006 survey represents data from 11 cheese plants of which 8 were among the 16 plants participating in the 2005 survey. For butter, 4 plants provided cost data in the 2006 survey and 2005 survey, but the surveys represent different collections of sampled plants with different production volumes. Regarding butter manufacturing cost data, the 2006 survey differs from the early survey in that the 2006 survey employed a different method for allocating costs between butter and NFDM production in plants that jointly manufactured these products. For NFDM, the plants sampled and reported in the 2006 survey included all but one of the plants sampled as part of the 2005 survey.

The determination of the adopted make allowances for cheese, butter, NFDM and dry whey are discussed below. The make allowances adopted represent national manufacturing cost averages for cheese, butter, NFDM and dry whey. As found and determined in previous rulemakings on this issue, an estimation of manufacturing costs for national application requires that national production volumes of these commodities be considered in determining the level of make allowances to be relied upon and used in the Class III and Class IV product-pricing formulas. This is critical because Class III and Class IV prices are the same in all Federal milk marketing orders.

Butter Make Allowance

The butter manufacturing cost data presented in the CPDMP 2006 survey reports weighted average costs based on a sample of four plants. These data are combined with the average cost data from the most recent CDFA survey and averaged over the 2006 national production volume as published by NASS. The combination of the weighted average costs from the CPDMP and CDFA surveys over the national production volume plus a marketing cost adjustment of $0.0015 yields a make allowance $0.1715 per pound for butter.

NFDM Make Allowance

The NFDM manufacturing cost data presented in the CPDMP 2006 survey reports weighted average costs based on a sample of 7 non-California plants. These data are combined with the weighted average costs reported by CDFA and averaged over the 2006 national NFDM production volume as reported by NASS. The combination of the weighted average costs from the CPDMP and CDFA surveys by the national production volume plus a marketing cost adjustment of $0.0015 yields a make allowance $0.1678 per pound of NFDM.

Cheese Make Allowance

The cheese manufacturing cost data presented in the 2006 CPDMP survey reports an average cost of producing a pound of cheese of $0.1584 per pound. This is significantly below the cost of producing a pound of cheese reported by the 2005 CPDMP survey. The cost difference was explained by the inclusion of fewer small plants in the 2006 survey. In addition, cheese manufacturing costs of a larger plant were included in the 2006 survey that did not participate in the 2005 survey. This led to 2006 survey results that are heavily weighted towards larger volume plants.

The record reveals that eight cheese plants participated in both the 2005 and 2006 surveys and their costs increased an average of $0.017 per pound of cheese between the two survey years. The Cornell researcher who administered both surveys conceded that this was the strongest conclusion which can be drawn from the cheese manufacturing data of the two surveys. Supporters of relying on the $0.017 factor to compute a new make allowance purport that this number can simply be added to the 2005 CPDMP plant average population cost of $0.2028. This decision finds that combining those two figures to compute a new cheese make allowance is procedurally incorrect. While a cost increase of $0.017 is significant and may be factually correct, it cannot be a factor in determining a new make allowance unless the original 2005 average manufacturing cost of the eight plants is included in the record. Therefore, use of the $0.017 cost increase in determining a new cheese make allowance is rejected.

While the $0.017 cannot be used to determine a new cheese make allowance, the cost comparison between the same samples of plants does reveal that average manufacturing costs have increased. However, comparing the weighted average cheese costs of the two CPDMP surveys indicates that processing costs have actually declined $0.0054 per pound. This decision finds that the inconsistencies between the two CPDMP surveys call into question whether either survey is representative of cheese manufacturing costs. Accordingly, for the purpose of determining a make allowance for cheese, the CPDMP 2006 survey results for cheese are rejected.

This decision finds that the CDFA 2006 survey of average cheese manufacturing costs is the best available information representing the manufacturing cost of producing a pound of cheddar cheese. Accordingly, the make allowance proposed for adoption for cheddar cheese is $0.2003 per pound including $0.0015 per pound marketing cost adjustment.

Dry Whey Make Allowance

Estimating the manufacturing cost of producing dry whey presents a problem similar to that for cheese. The most recent published CDFA manufacturing cost survey reveals that CDFA was not satisfied with the precision in estimating the average cost per pound for whey products it discovered through plant audits. In light of this concern regarding dry whey manufacturing costs, this decision does not rely on the CDFA data.

This decision does rely on the CPDMP 2006 survey of the average manufacturing cost to produce a pound of dry whey. Relying solely on the CPDMP 2006 survey is identical to the approach used in determining the make allowance for dry whey currently used in the Class III price formula. The 2006 survey value of $0.1976 plus a marketing cost adjustment of $0.0015 yields a dry whey make allowance of $0.1991 per pound.

An issue was raised by Twin County in its brief concerning an alleged differential impact on small and large businesses if make allowances or Class III and IV price formulas are amended. However, the purpose of the Class III and IV price formulas and make allowances is to set individual minimum class prices for the Federal milk order program on a national basis.

Butterfat Yield Factor

A proposal, published in the hearing notice as Proposal 6, was included in a package of proposals advanced by DPNM seeking to amend the product price formulas to more accurately capture the use of modern manufacturing technology and its impact on milk value. A portion of Proposal 6 seeks to amend the butterfat yield factor in the butterfat price formula from 1.20 to 1.211 to account for what DPNM and other participants in this proceeding characterized as a misapplication of farm-to-plant shrinkage when the Class III and Class IV product-price formulas were adopted in November 2002 (67 FR 67906), and became effective on April 1, 2003 (68 FR 7063).

Specifically, DPNM explained that the current butterfat recovery factor of 1.20 used in the butterfat pricing formula is the result of the incorrect application of the butterfat shrinkage factor of 0.015 percent on a per pound of butterfat basis rather than on a per cwt basis. As explained by DPNW, the shrinkage factor was, however, properly applied to the butterfat adjustment portion of the protein price formula. Correction of this mathematical error removes this inconsistency between the butterfat pricing formula and the protein price formula.

This decision agrees with DPNM and others who support correction of this error. In the 2002 final decision adopting the current butterfat yield of 1.20, USDA correctly explained that when accounting for the farm-to-plant loss of milk, there is a 0.25 percent butterfat loss per pound of butterfat, plus an additional loss of 0.015 pounds per cwt of milk. However, when mathematically accounting for the loss in the price formulas, the additional 0.015 pound of loss was applied on a per pound of butterfat basis. This decision corrects that error and adopts a butterfat yield of 1.211.

Opponents of amending this factor do not dispute that the current butterfat yield factor used in the pricing formulas is in error. Rather, opposition rests on the premise that manufacturing processors are already paying too much for raw milk and attribute paying too much to the in-plant shrinkage of butterfat that cannot be processed into a finished product. Furthermore, adopting the 1.211 factor would result, all other factors unchanged, in a higher minimum price for raw milk. This decision rejects such arguments. The arguments are based on an unwanted outcome and not on the basis of the proper application of this factor. The other features of Proposal 6 are not adopted and those features are discussed later in this decision.

Other proposals considered in this proceeding address the three major elements of the product-price formulas—end-product prices used in the formulas, manufactured product yield factors and other intra-formula cost factors. A proposal (Proposal 18) advanced to establish an alternative

approach to determining prices of raw milk by attempting to develop a competitive pay price also is considered.

Product Yields and Butterfat Recovery Percentage

A package of proposals was advanced by DPNM that seek to amend the product-price formulas to capture the use of more modern manufacturing technology and its impact on milk value (Proposals 6, 7, and 8). As already discussed, a part of Proposal 6 seeking to amend the butterfat yield factor in the butterfat price formula from 1.20 to 1.211 is adopted. However, Proposal 6 also seeks to increase the butterfat recovery percentage in the protein price formula from 90 percent to 94 percent. The argument for increasing this factor is that new cheese manufacturing technology has increased the amount of butterfat that manufacturers could possibly recover when making cheese. A 94 percent recovery rate will also increase the blend price paid to producers by $0.07 per cwt.

Opponents to increasing the butterfat recovery rate, including LOL, NDA, Sorrento, Leprino, MMPA, and H.P. Hood presented evidence countering the DPNM claim that a butterfat recovery in excess of 90 percent is achievable industry-wide. Many manufacturer witnesses testified that their butterfat recovery percentage in cheese is, on average, 90 percent.

While the record contains evidence of what butterfat recovery in cheese production is possible by the use of more modern manufacturing methods and technology, the preponderance of evidence reflects that many cheese manufacturers generally achieve butterfat recovery near 90 percent. It is important that the product-price formulas reflect current market conditions, not market conditions that may be possible but not widely achieved or not reflective of general industry wide conditions. Accordingly, this decision rejects adoption of this feature of DPNM Proposal 6.

A second proposal of the DPNM package of proposals, Proposal 7, seeks to eliminate the farm-to-plant shrink adjustment factors in the Class III and Class IV product-price formulas. The argument by proponents is that modern measurement and milk-handling techniques, and the trend of transporting full loads of milk from single producers negate the need to retain the shrinkage adjustment factors. Opponents argue that in many marketing areas, milk shipments are commonly assembled from multiple farms and some farm-to-plant shrinkage is inevitable.

Record evidence supports concluding that farm-to-plant shrinkage remains a reality for manufacturers. Numerous witnesses testified regarding actual average farm-to-plant shrinkage experienced at their plants: LOL (0.343 percent); MMPA (0.3 percent); Leprino (0.25 percent); and HP Hood (1.5 percent). While DPNM argued that its members farm-to-plant shrinkage is well below the 0.25 percent contained in the Class III and Class IV product-price formulas, no evidence was offered for examination as an alternative other than its elimination.

This decision finds that the Class III and Class IV product-price formulas should continue to recognize the loss of milk that occurs when milk is moved from the farm to a receiving plant. The record also supports concluding that some losses are outside the control of the manufacturer. The 0.25 percent shrinkage factor contained in the formulas is a reasonable factor that represents the loss of producer milk when shipped from farm-to-plant. Accordingly, Proposal 7 is not adopted.

A third proposal of the DPNM package of proposals, Proposal 8, seeks to increase the nonfat solids (NFS) yield factor in the Class IV product price formula and the yield factors for protein and butterfat in the protein price formula components of the Class III product-price formula. The argument for increasing these yield factors is that that new technology could allow manufacturers to achieve higher product yields increasing the value of a cwt of raw milk. Opponents counter that the methodology used to derive the proposed yield factors are flawed and that no actual studies were offered to support concluding that product yields are higher than those currently provided in the formulas.

As with the rejection of a portion of Proposal 6 discussed above, the preponderance of record evidence does not support concluding that the NFS yield or the cheese yield based on protein and butterfat retention in cheese manufacturing should be changed. The record does not contain credible data that shows that the proposed yields are achievable. While the proponent offered proposed yield factors from published data, it failed to take into account whether the addition of milk solids to cheese vats was the likely source of higher product yields. In fact, numerous cheese manufacturers testified that when economically feasible they fortified their cheese vats to increase vat yields. For these reasons this decision finds that the current product yield factors used in the Class III and Class IV product-price formulas are reasonable. Accordingly, Proposal 8 is not adopted.

Value of Butterfat in Whey

Two proposals advanced by IDFA and Agri-Mark, Proposals 9 and 10 respectively, seek to change the protein price formula feature of the Class III product-price formula by reducing the protein price to reflect the lower market value of whey cream. Proposal 9 also seeks to further lower the protein price to reflect the reduced recoverable volume of whey cream in the cheese making process. (During the proceeding Agri-Mark withdrew its support of Proposal 10 in support of IDFA's Proposal 9.) The argument for seeking these changes is that that the volume of milk contained in whey cream is currently valued at the Grade AA butter price but can only be sold as whey butter (Grade B butter) or for other uses with values below the Grade AA butter price. Record evidence does indicate that Grade B butter is marketed at a discount to the Grade AA butter price and is often marketed to commercial food service establishments such as bakeries. Although some hearing participants (NAJ) suspect that the volumes of whey cream produced and the extent of a secondary market for whey butter are relatively small, record evidence also contains very limited data regarding plant sales of whey butter. More importantly, there is no known publically available data for U.S. market prices and volumes of whey butter produced or sold.

Opponents (Dairylea, et al.) to IDFA's proposal acknowledge that while whey cream does have a lower value than that reflected in the Grade AA butter price, other higher-value uses for whey cream exist that also are not recognized. Opponents argue that it would be inappropriate to amend the butterfat value to reflect a selected measure of whey cream value while not considering whey cream value in other (possibly higher-value) uses.

The record does not support reducing the protein price to account for unknown volumes and values of whey cream. Without publicly available market data that measures and reports whey cream volumes and prices, no reasonable and objective means is available to determine if or how whey cream is unreasonably distorting the protein price formula feature contained in the Class III product-pricing formula. The lack of verifiable data concerning whey cream and/or its applicability to any additional costs or value loss experienced by cheese manufacturers across the industry is unknown.

Accordingly, Proposal 10 is not adopted.

Barrel-Block Cheese Price Spread

Proposal 12 offered by IDFA and supported by Leprino, DFA, NDA, Agri-Mark, and others, seeks to eliminate the 3-cent addition to the barrel price in the protein price formula. The argument for elimination from the protein price formula is that the average price difference between block and barrel cheese was 3-cents when first incorporated into the formula but now there is now virtually no difference in the packaging costs of blocks and barrels. Proponents also argue that even if there were a cost difference, that difference would have been captured in the CPDMP 2006 survey of manufacturing costs. Other proponents add to the argument that after the NASS barrel cheese price was adjusted from 39 percent to 38 percent moisture content in January 2001, the price difference between barrels and blocks has averaged $0.008 per pound.

The record contains only one cheese manufacturer's (Davisco) specific packaging cost data for a single plant located in Minnesota that produces cheese in both blocks and barrels. That plant's average packaging cost for block cheese was $0.0012 per pound more than for barrels. Another cheese manufacturer (Twin County) producing exclusively cheese in barrels in Iowa was unable to indicate whether it was advantageous to their business to support or oppose any change in the 3-cent adjustment advanced in Proposal 12.

The record does not support a finding for adopting Proposal 12. The argument that any packaging cost differences that exist between barrel and block cheese is captured in the CPDMP 2006 survey is inadequately supported. The record reveals that all packaging costs reported in the CPDMP 2006 survey were for 40-pound block cheese production. If a surveyed plant produced barrel cheese, an average packaging cost for 40-pound blocks was assigned to the plant.

Additionally, proponents assert that since the price difference between blocks and barrels is almost zero, it can be concluded that any packaging cost difference must also be nearly zero. This decision does not find a causal relationship between selling prices and costs. While evidence does support that market prices of blocks and barrels can sometimes be identical, it cannot be concluded that any purported cost difference arising from packaging cost differences must have also disappeared. The sometime relatively similar market prices of block and barrels could be explained by a multitude of factors not relating to manufacturing and packaging costs.

Packaging cost differences between barrels and blocks may well be negligible. While the record contains packaging cost information for a single plant that suggests similar packaging costs of barrel and block cheese, such evidence is insufficient to conclude that this is representative across Federal order manufacturing plants or should be the basis for adopting the proposal. Accordingly, Proposal 12 is not adopted.

The proposal by DFA and NDA, Proposal 13, seeks to eliminate the cheese barrel price from the protein price formula feature of the Class III product-price formula, but not testimony given in support of this proposal. In addition to NDA proponent support during the hearing and DFA opposition to the adoption of the proposal in their post-hearing brief, significant opposition from others was given. Opponents argue that because barrel cheese represents roughly half of the NASS price survey cheese volume, removing the barrel price from the protein price formula would greatly reduce the total NASS survey volume and thus make the price survey less representative of the cheddar cheese market.

This decision finds that retaining the cheese barrel price in the protein price formula is necessary to ensure that the protein price is representative of the national cheese market. The Class III product-product price formula needs to be as reasonably representative of the market for cheese that determines the value of milk. Record evidence reveals that barrel production in the NASS survey is often in excess of 50 percent of the total cheese volume surveyed. Eliminating the barrel price from the protein price formula would significantly and needlessly reduce the volume of cheese used in the Class III product price formula which could lead to protein prices that are not as representative of the national cheese market. Accordingly, Proposal 13 is not adopted.

Product Price Series

Proposal 14 advanced by Agri-Mark, seeking to change the price data used in the Class III and protein price formula by combining NASS price survey data for cheddar cheese with weekly average CME cheese prices is presented as a superior benchmark price for cheese. The argument rests on the assertion that 2-week timing difference, or lag, between the CME price and the NASS price survey for cheese fails to capture changes in market prices in the current value of cheese and the near-actual Class III value. The proponent also argues that adoption of this new price series would reduce price volatility and provide more up-to-date market information than that currently provided by the NASS price survey. In other words, more current market information would be transmitted through minimum Class III prices and provide more accurate pricing signals to processors and producers.

Opponents to adoption of Agri-Mark's Proposal 14, including IDFA and its members, collectively argue that combining the CME price with the NASS price would reduce the usefulness of currently available risk management tools. Those tools include the use of futures contracts and the use of forward contracts. Opponents also note that the CME is a spot market representing only about 4.1 percent of all cheddar cheese traded and is not representative of cheese being more commonly produced and marketed on a longer-term contract basis, that it adds a degree of complexity to a pricing-formula that is already too complex without any discernible benefit and its adoption would tend to bias price reporting to the market conditions of the Chicago area.

It is reasonable to expect that adding a degree of complexity may tend to reduce transparency and lessen the understanding of the Class III and Class IV product-pricing formulas. Other than assertions by the proponent, the record lacks evidence that combining CME prices with NASS survey prices will improve price discovery, market information, or offer a superior transmission of economic signals through the minimum Class III price.

A rulemaking action on mandatory product price reporting overtakes the need to consider adoption of a new price series that combines CME prices with NASS survey prices. Improved mandatory price reporting that provides for auditing prices reported to NASS and will make the accuracy, but not the timing, of price data less of an issue than envisioned during the course of the hearing.

It would not be appropriate to compare NASS and CME prices as being coincident after accounting for their 2-week lag until adequate data has been collected against which a reasonable price comparison can be made. If the reported cheese prices in the NASS reports are largely and similarly reflective of CME prices, then the proponent's analysis and conclusions retain validity. If large differences are discovered between audited mandatory

price reports compared with price reporting that does not include auditing, then Agri-Mark's analysis of the 2 price series being nearly identical may no longer be reasonably recreated by a time lag adjustment. Unaudited price reporting includes all reporting prior to the effective date of August 2, 2007, for implementation of the mandatory price reporting and auditing rulemaking. Accordingly, Proposal 14 is not adopted.

A proposal advanced by DPNM, Proposal 15, seeking to replace the NASS price series for cheese with the CME price has similarities to that of Proposal 14. It seeks to eliminate the 2-week lag between CME prices and NASS price reporting. DPNM argues that using CME prices in the price formula for cheese would provide producers, marketers, and manufacturers of cheddar cheese with timelier prices and that CME represents actual current cheese prices.

Opponents, including IDFA and its members, NDA, Agri-Mark and DFA, as in their opposition to the adoption of Proposal 14, argue that the CME is too thin a market to be relied upon for use in the Class III product-price formula, that the CME represents only about 4.1 percent of all cheddar cheese traded, that its exclusive use would tend to bias and limit the price reporting for cheese to the market conditions of the Chicago market, and that being a spot market for cheese, it ignores other sales agreements and marketing arrangements that account for more than 95 percent of the cheese marketed and largely captured in the NASS price survey.

This decision agrees with opponents in that cheese prices used in product-price formulas should reflect broad market trends and not rely exclusively on a smaller subset of cheese prices and spot marketing conditions represented by the CME. The record also makes clear that more industry confidence is placed on NASS price surveys than spot market prices for cheese. Accordingly, Proposal 15 is not adopted.

Other Solids Price

Proposal 16, advanced by NAJ, seeks to eliminate the other solids price and expand the protein price formulas to include the value of dry whey because, according to NAJ, the value of whey lies in its protein content. The proponent asserts that the other solids price formula does not connect the market value of whey solids to how producers are paid for whey. Therefore, the proponent advocates that the value of dry whey in the price formulas be determined on the basis of its protein content which will make the other solids price formula no longer necessary.

IDFA and other opponents argue that it would inappropriate to value dry whey on a component (protein) that has no measurable effect on the product yield.

This decision finds that Proposal 16 would add no additional value arising from protein to the marketwide pool. It would simply shift the money attributed to other nonfat solids into the protein price formula and add a level of complexity to the product price formulas that would yield no measurable benefit.

Record evidence does not support eliminating the other nonfat solids prices and shifting the value of dry whey into the protein price formula. Other solids in milk are composed primarily of lactose, whey protein, ash and other non-protein solids. Numerous component markets, such as lactose and dry whey, were evaluated during Federal order reform to determine an appropriate market on which to base the other solids price. It was determined that because no reliable lactose market existed, the dry whey market was the next best alternative. At this time, there is still no reliable market for lactose on which the other solids price could be based. Therefore, this decision finds that dry whey remains the most relevant market on which to base the other solids price. Accordingly, Proposal 16 is not adopted.

Competitive Price Series

Proposal 18, advanced by the Maine Dairy Industry Association (MDIA), seeks to determine Class III and Class IV prices with a competitive pay price series rather than the current product-price formulas. The proposal seeks a return to a competitive pay price used by the FMMO program prior to 2000. The proponent argues that adoption of the proposed competitive pay price series would eliminate the need for establishing make allowances that, when increased, reduce prices received by dairy farmers.

A competitive pay price series previously existed for nearly 40 years and provided the foundation for all classified prices set in the system of milk marketing orders. A competitive pay price series would negate the need to directly consider manufacturing costs and other factors such as product yields and their relationship in deriving the value of raw milk.

However, there are many details that need resolution before the FMMO program can return to basing classified prices on a competitive pay price series. For example, the proposed method is based on geographic areas (zones) wherein strong competition for raw milk prevails. A competitive pay price would be derived by averaging prices from all the competitive price zones. As conceded by the proponent, these areas would most likely be surrounded by Federal milk marketing areas where minimum classified prices prevail and therefore milk prices within the competitive price zones would be influenced by milk priced under adjoining Federal orders. Other considerations, such as accounting for various forms of in-kind payments to producers, also need to be addressed. Ignoring consideration of such subsidies would allow plants to increase (decrease) their hauling subsidies as a way of reducing (increasing) the actual pay price to dairy farmers.

For the same reasons articulated regarding the need to abandon a competitive price series, the only current practical method upon which to establish minimum Federal order prices are product-price formulas. While other methods have been considered, none had superior benefits or had broad-based industry support other than product-price formulas.

Therefore, this decision finds that Proposal 18 cannot be implemented as proposed. Accordingly, Proposal 18 is not adopted.

Rulings on Motions

A motion for official notice of publications and a final decision by the CDFA was submitted by Agri-Mark, et al., joined by Twin County Dairy, Inc., and supported by IDFA. This decision takes official notice of these publications. Accordingly, the motion is rendered moot.

A motion and supplemental information in support of that motion seeking a continuance of the hearing for the limited purpose of offering additional data and analysis in advancing Proposal 18 were submitted by MDIA. A counter motion opposed to MDIA's motion was made by IDFA. Offering new data and analysis by continuing or re-opening the hearing for the limited purpose of reconsidering Proposal 18 would put all other hearing participants advancing or opposing proposals during the proceeding at a disadvantage. This proceeding occurred for 3 weeks held over the 6 month period of February 2007 through July 2007. It also was preceded by an information session in December 2006. This decision finds that sufficient time was made available to all known parties to develop and present noticed proposals. Accordingly, the motion is denied.

2. Determining Whether Emergency Marketing Conditions Exist That Would Warrant Omission of a Recommended Decision

Evidence presented at the hearing and in post-hearing briefs establishes that current manufacturing allowances contained in the product price formulas do not reflect the current costs of manufacturing milk into cheese, butter, NFDM and dry whey. Data presented at the hearing demonstrates that manufacturing costs have increased since manufacturing allowances were last updated and implemented on March 1, 2007. The method of determining the new make allowances proposed to be adopted in this tentative decision is the same method used when the current make allowances were adopted and implemented. Issuance of a recommended decision is not reasonable as it would only delay implementation of make allowances that more reasonably reflect higher manufacturing costs being incurred by manufacturers. Additionally, the method of determining the proposed make allowances is the same as that used in determining the make allowances currently in use and is known by handlers. The record also shows that the yield factor in the butterfat formula is not accurate. This factor should be amended from the current 1.20 to 1.211 to improve the accuracy of the Class III and Class IV product-pricing formulas. Improving the accuracy of the formulas upon which all classified milk prices are set in all orders is critical in providing processors with adequate revenue to maintain operations and in providing producers with market-based pricing signals from which they base production and marketing decisions. Accordingly, the record clearly establishes a basis for amending the orders on an interim basis.

Consequently, it is determined that emergency marketing conditions exist that warrant omitting the issuance of a recommended decision. The record clearly establishes a basis as noted above for amending the orders on an interim basis. The opportunity to file comments to the proposed amended orders remains.

In view of these findings, an interim final rule amending the orders will be issued as soon as the procedures to determine the approval of producers are completed.

*Rulings on Proposed Findings and Conclusions*

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

*General Findings*

The findings and determinations hereinafter set forth supplement those that were made when the Northeast and other marketing orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The interim marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The interim marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

*Interim Marketing Agreements and Interim Order Amending the Orders*

Made a part hereof are two documents—an Interim Marketing Agreement regulating the handling of milk and an Interim Order amending the orders regulating the handling of milk in the Northeast and other marketing areas—which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, that this entire tentative partial decision and the interim orders and the interim marketing agreements hereto be published in the **Federal Register**.

*Referendum Order To Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent*

It is hereby directed that referenda be conducted and completed on or before the 30th day from the date this decision is published in the **Federal Register**, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the orders as amended and as hereby proposed to be amended, regulating the handling of milk in the Appalachian, Arizona, Central, Florida, Mideast, Northeast, Pacific Northwest, Southeast, Southwest and Upper Midwest marketing areas is approved or favored by producers, as defined under the terms of the orders (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

The representative period for the conduct of such referenda is hereby determined to be July 2007.

The agents of the Secretary to conduct such referenda are hereby designated to be the respective market administrators of the aforesaid orders.

*Interim Order Amending the Orders Regulating the Handling of Milk in the Northeast and Other Marketing Areas*

This interim order shall not become effective until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

*Findings and Determinations*

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Northeast and other marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and

conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to Section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

**List of Subjects in 7 CFR Part 1000**

Milk marketing orders.

**Order Relative to Handling**

*It is therefore ordered,* that on and after the effective date hereof, the handling of milk in the Northeast and other marketing areas shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

## PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

1. The authority citation for 7 CFR part 1000 is amended to read as follows:

**Authority:** 7 U.S.C. 601–674, and 7253.

2. Section 1000.50 is amended by:
a. Revising paragraph (l);
b. Revising paragraph (m);
c. Revising paragraph (n)(2);
d. Revising paragraph (n)(3)(i);
e. Revising paragraph (o); and
f. Revising paragraph (q)(3).
The revisions read as follows:

**§ 1000.50 Class prices, component prices, and advanced pricing factors.**

* * * * *

(l) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA Butter survey price reported by the Department for the month, less 17.15 cents, with the result multiplied by 1.211.

(m) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month, less 16.78 cents and multiplying the result by 0.99.

(n) * * *

(1) * * *

(2) Subtract 20.03 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.383;

(3) * * *

(i) Subtract 20.03 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.572; and

* * * * *

(o) *Other solids price.* The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month minus 19.91 cents, with the result multiplied by 1.03.

* * * * *

(q) * * *

(1) * * *

(2) * * *

(3) An advanced butterfat price per pound rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the 2 most recent U.S. average NASS AA Butter survey prices announced before the 24th day of the month, subtracting 17.15 cents from this average, and multiplying the result by 1.211.

[**Note:** The following will not appear in the Code of Federal Regulations.]

**Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas**

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof, as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of § ____ to ____ [6] all inclusive, of the order regulating the handling of milk in the _____ [7] marketing area (7 CFR part ____); [8] and

II. The following provisions: § ____ [9] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of ____ [10], ____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Department in accordance with Sec. 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature
By (Name)

_____

(Title)

_____

(Address)

_____

(Seal)
Attest

_____

Dated: June 16, 2008.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. E8–13943 Filed 6–19–08; 8:45 am]

**BILLING CODE 3410–02–P**

[6] First and last section of order.

[7] Name of order.

[8] Appropriate Part number.

[9] Next consecutive section number.

[10] Appropriate representative period for the order.

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June 20, 2008

## Part V

# The President

**Notice of June 18, 2008—Continuation of the National Emergency With Respect to the Risk of Nuclear Proliferation Created by the Accumulation of Weapons-Usable Fissile Material in the Territory of the Russian Federation**

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# Presidential Documents

**Title 3—**

## The President

**Notice of June 18, 2008**

## Continuation of the National Emergency With Respect to the Risk of Nuclear Proliferation Created by the Accumulation of Weapons-Usable Fissile Material in the Territory of the Russian Federation

On June 21, 2000, President Clinton issued Executive Order 13159 (the ''order'') blocking property and interests in property of the Government of the Russian Federation that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons that are directly related to the implementation of the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, dated February 18, 1993, and related contracts and agreements (collectively, the ''HEU Agreements''). The HEU Agreements allow for the downblending of highly enriched uranium derived from nuclear weapons to low enriched uranium for peaceful commercial purposes. The order invoked the authority, inter alia, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the risk of nuclear proliferation created by the accumulation of a large volume of weapons-usable fissile material in the territory of the Russian Federation.

The national emergency declared on June 21, 2000, must continue beyond June 21, 2008, to provide continued protection from attachment, judgment, decree, lien, execution, garnishment, or other judicial process for the property and interests in property of the Government of the Russian Federation that are directly related to the implementation of the HEU Agreements and subject to U.S. jurisdiction. Therefore, in accordance with section 202 (d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to the risk of nuclear proliferation created by the accumulation of weapons-usable fissile material in the territory of the Russian Federation. This notice shall be published in the **Federal Register** and transmitted to the Congress.

THE WHITE HOUSE,
*June 18, 2008.*

[FR Doc. 08–1375
Filed 6–19–08; 10:26 am]
Billing code 3195–W8–P

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Bombardier Model DHC 8 400, -401 and -402 Airplanes; comments due by 6-23-08; published 5-23-08 [FR E8-11566]
Dornier Model 328-100 Airplanes; comments due by 6-23-08; published 5-22-08 [FR E8-11469]
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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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**H.R. 6081/P.L. 110–245**

Heroes Earnings Assistance and Relief Tax Act of 2008 (June 17, 2008; 122 Stat. 1624)

**Passed over the President's Veto:**

**H.R. 6124/P.L. 110–246**

Food, Conservation, and Energy Act of 2008 (June 18, 2008; 122 Stat. 1651)

**Last List June 10, 2008**

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